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Letter dated 18 September 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

In accordance with Security Council resolution 1617 (2005), I have the honour to transmit herewith the fifth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) and extended by resolution 1617 (2005) (see enclosure). Currently, the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities has initiated its consideration of the report with a view to improving the established sanctions measures and their implementation.

I should be grateful if the attached report could be brought to the attention of the Council members and issued as a Security Council document as soon as possible.

(*Signed*) César **Mayoral**
Chairman
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

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Annex

Letter dated 31 July 2006 from the Coordinator of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team, established pursuant to Security Council resolution 1526 (2004) and extended by Security Council resolution 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities, has the honour to transmit to you its fifth report, in accordance with annex I to resolution 1617 (2005).

(*Signed*) Richard **Barrett**
Coordinator

Enclosure

Fifth report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolutions 1526 (2004) and 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. Against a background of rising tensions and a steady stream of terrorist attacks, the United Nations Al-Qaida/Taliban sanctions regime continues to attract considerable international attention. Over the last six months this has focused on three areas: the need to improve procedures for adding and removing names from the Consolidated List of individuals and entities subject to the sanctions,[1] the need to make the sanctions more effective and relevant to the threat, and the need to increase the involvement of as wide a range of United Nations Member States as possible. This report addresses these issues.

2. The Monitoring Team has made many recommendations on listing and de-listing over the last two years, and in the last six months there have been additional proposals from States and at least three major academic studies with respect to the fairness of the sanctions regime. The matter is now at the top of the 1267 Committee's agenda.

3. The Team has continued to gather information from States on their assessment of the sanctions regime and on their difficulties with implementation. Support for the Committee remains robust, but States are often frustrated that their problems, especially as regards the travel ban and the arms embargo, are still far from solution. However, several States have introduced new measures to counter terrorism, and the Team believes that progress with implementation remains steady.

4. The assets freeze is the best understood of the measures, and the easiest to implement; but although some issues have been addressed, many remain. More importantly, in terms of the effectiveness of international measures to counter the financing of terrorism, the Team continues to believe that while they have become more sophisticated, they should take greater account of how terrorists are actually paying for their operations.

5. The Team has seen an increasing willingness of States to band together to prevent the movement of terrorists and their supporters across borders, and these efforts have made a difference; but at the same time, there is no doubt that listed persons continue to travel and the problems of un-policed borders, and widely available stolen, falsified or forged documents remain persistent and difficult to address.

6. The Team continues to believe that the arms embargo should take into account the evolution in terrorists' tactics in order to address the threat posed by listed individuals and entities. States need a clearer definition of their obligations under the arms embargo in order to better implement this sanction and to make it more effective.

7. Another widespread frustration among States is a lack of proper knowledge and understanding of the nature of the threat and the best way to deal with it. The trans-national nature of Al-Qaida and the subversive appeal of its message leave many States at a loss, seeing ways to suppress but not to defeat the problem. The Team has continued to bring together groups of very senior intelligence and

[1] The Consolidated List of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, www.un.org/Docs/sc/committees/1267/1267List.htm

security officials to discuss these issues, and has made contact with many others to try to identify new measures and actions that the Committee could consider. It is clear that there are no easy solutions.

II. Introduction

A. Gains and losses

8. Over the last six months Al-Qaida, Usama Bin Laden and the Taliban have made some gains and suffered some losses. The violence in Afghanistan has increased considerably, and there has been no let up in Iraq, with Al-Qaida's contribution remaining disproportionate to its size. Elsewhere, there have been many attacks that promoted Al-Qaida objectives, even if mounted by unconnected groups or individuals with narrower sectarian or political aims. Although still remote from the action, Bin Laden has released five audio tapes since January 2006 that have received much publicity and reinforced his role as an inspirational leader and a unifying force.

9. But there have also been deaths and arrests. Ahmad Fadil Nazal Al-Khalayleh (also known as Abu Musab Al-Zarqawi), killed in Iraq in June, and Shamil Basayev, killed in Ingushetia, Russian Federation, in July, both on the Consolidated List, were key leaders, and there have been other significant losses, including in Afghanistan and Saudi Arabia. There have been many arrests and disrupted plots, only some of which have been announced publicly. Despite warnings by Al-Qaida of major imminent attacks against Western countries, none has occurred, at least not yet.

B. Afghanistan and the Taliban

10. Taliban gains in Afghanistan can be seen in the resurgence of violence which has led to more than 2,000 deaths between January and July 2006.[2] There was less respite from the fighting than is usual over the winter months[3] and Taliban groups have been able to take over towns, albeit briefly, as well as dominate large areas of countryside. Drug producers/traffickers and local Taliban commanders have been increasingly willing to cut deals, with the former providing money and weapons in return for protection (see annex I). While ideological support for the Taliban may be low, high levels of unemployment, poverty, hunger, illiteracy, and a general sense of insecurity have made farmers vulnerable to Taliban inducements on the one hand and intimidation on the other. By murdering non-Taliban imams, school teachers and tribal and community leaders who might have encouraged a new generation of Afghans to believe in the possibility of peace, the Taliban have managed to undermine earlier progress and have further highlighted the huge problems that face the Afghan Government.

11. The Taliban have also continued to benefit from a close relationship with Al-Qaida and related foreign groups. Usama Bin Laden publicly repeated his oath of allegiance to Mullah Omar in his audio tape aired on 29 June,[4] and non-Afghans are still found fighting alongside the Taliban, or

[2] Briefing to the Security Council by Tom Koenigs, Special Representative of the Secretary-General for Afghanistan, 26 July 2006.

[3] Nine attacks Nov-Feb 2004/05; 32 attacks Nov-Feb 2005/06. Rand Terrorism Knowledge Base at www.tkb.org/Home.jsp.

[4] Text available in Arabic at www.alquds.co.uk.

operating in supporting cells.[5] Since the beginning of 2002, the 1,000 or so people arrested by Pakistan authorities have included nationals from Saudi Arabia (86), Algeria (70), West Africa (36), Indonesia (28), the United Arab Emirates (22), Egypt (20), Morocco (20), Malaysia (18), Libya (11), the United Kingdom (11), Kuwait (7), the United States (5) and Australia (2), as well as from France, Germany and Central Asia.[6] Al-Qaida attack techniques have also become more evident in Afghanistan, with at least 56 suicide bombings between 1 January and 27 July 2006, compared with 21 in all 2005, and only 10 between September 2001 and December 2004.[7] New explosive devices are now used in Afghanistan within a month of their first appearing in Iraq.[8] And while the Taliban have not been found fighting outside Afghanistan/Pakistan, there have been reports of them training in both Iraq[9] and Somalia.[10]

12. Significantly, the Taliban have also copied or learnt from Al-Qaida the value of slick publicity. High-quality video compact discs of Taliban activity, designed to provoke a religious or emotional response from an unsophisticated and ill-educated target audience, are circulated to news outlets and distributed widely in Afghan and Pakistani markets. Partially as a consequence, and emboldened by their success in Afghanistan, Taliban collaborators are confronting Pakistan forces in the Tribal Areas with increased ferocity.

13. There are few areas where the Taliban have lost ground. Although they have sustained heavy casualties and more Afghan and foreign forces have entered the areas that they dominate, they have no shortage of recruits or arms. In fire-power, they are inferior, but they know the terrain and can choose the place and time of their attacks. Also, they must reckon that foreign forces will eventually withdraw, leaving a vulnerable and thinly spread Afghan National Army. But the appeal of the Taliban depends more on social conditions and the lack of good governance in areas where they are strong than on ideology. It may therefore be better to target individual Taliban leaders rather than see them as a cohesive whole and confront a large number of Pushtoon madrasa students who feel challenged by though not yet connected to the insurgency. The Al-Qaida/Taliban sanctions regime can help in this respect if the new generation of Taliban leaders are added to the Consolidated List.

C. Iraq and Al-Qaida

14. As Iraq continues to slide towards civil war, Al-Qaida may paradoxically see more losses than gains. It has gained by continuing to play a central role in the fighting and in encouraging the growth of sectarian violence; and Iraq has provided many recruits and an excellent training ground. Also, the death of Al-Zarqawi, while a significant blow, may not have been totally unwelcome to the Al-Qaida leadership. First, it eliminated an alternative focus to Bin Laden and Zawahiri; second, it removed a

[5] Intelligence briefing to the Monitoring Team.

[6] Mohammad Amir Rana, '1,000 Al-Qaeda Suspects Arrested From Pakistan', Pakistan Institute of Peace Studies, available at www.pips.com.pk/Al-Qaida.asp.

[7] Briefing to the Security Council by Tom Koenigs, Special Representative of the Secretary-General for Afghanistan, 26 July 2006.

[8] Information provided to the Team at a meeting of intelligence and security agencies.

[9] Al Jazeera interview with Mullah Dadullah, 31 May 2006, English transcripts available at memri.org/bin/articles.cgi?Page=subjects&Area=jihad&ID=SP113006.

[10] The Somalia Monitoring Group provided this information to the Team.

particularly bloodthirsty criminal, who undermined the righteous image of Al-Qaida that Bin Laden tried to portray, and third, it removed the most repellent image of terrorism in Iraq, which may have dissuaded many from joining its ranks, and caused divisions among those that did.

15. On the down side for Al-Qaida, several intelligence and security agencies have told the Team that fewer foreign fighters have been killed or captured in Iraq over the last few months, suggesting that the flow has slackened. Certainly, on return to their homelands, some fighters have expressed their dissatisfaction that on arrival in Iraq, they were asked to kill fellow Muslims rather than foreign soldiers,[11] or even told that there was no role for them except as suicide bombers. Some intelligence officials believe that Zarqawi's successor, Abu Hamza Al Muhajir, is in fact an Egyptian veteran who became an explosives expert in Afghanistan before spending time in Lebanon and Yemen. If so, while this will continue to provide Al-Qaida in Iraq with links to external groups, his appointment may give rise to further tensions between a 'foreign' leader and the Iraqi regional commanders. The prominent role of Al-Qaida may diminish as the violence escalates between communities, and distinctions blur between sectarian attacks on markets and places of worship, or purely criminal kidnapping and protection rackets on the one hand, and the fight against Iraqi and non-Iraqi forces on the other.

D. The Al-Qaida broadcasts

16. Al-Qaida has benefited considerably from the further development of its propaganda machine. After a year of silence, Usama bin Laden released five taped messages between early January and the beginning of July 2006. These tapes concentrate on repeating his basic political message that the United States and its allies are waging a war against Islam; that they should be attacked in all parts of the world to force them to leave Muslim lands, and that a pan-Islamic state should then be established. Bin Laden has emphasized that Iraq, Afghanistan, the Palestinian territories, Somalia and Sudan are the main areas of confrontation. Aiman Al-Zawahiri was even more active, issuing 13 messages, mainly as videos, in the same period.

17. Al-Sahab, the main Al-Qaida production facility, has continued to develop as a technically proficient and effective propaganda outlet. Its videos, broadcast through mainstream news media or via the Internet, have kept the Al-Qaida appeal broad and allowed it to become an ever looser catch-all title for any group that wants to justify violent opposition to political or social circumstances in religious terms. The tape marking the first anniversary of the London bombings, released on 7 July 2006,[12] is a good example. It strengthened the claim of Al-Qaida involvement in the attack, even though it was probably the bombers themselves who made contact with the leadership after completion of their plans, and included a cleverly constructed message from the American, Azzam Al-Amriki (Adam Gadahn), designed to appeal to disaffected English-speaking Muslims in the West, who continue to be a priority target of Al-Qaida recruitment efforts.

[11] Information provided to the Monitoring Team at its regional meetings for intelligence and security heads.
[12] English transcripts available at memri.org/bin/articles.cgi?Page=subjects&Area=jihad&ID=SP120106.

III. The Consolidated List

18. The Consolidated List remains at the centre of the Al-Qaida/Taliban sanctions regime and its efficient distribution is vital to successful implementation. It identifies individuals and entities that the Committee agrees are members of or associated with Al-Qaida, Bin Laden and the Taliban.[13] By the end of July 2006, the List had 478 entries: 142 individuals and one entity associated with the Taliban, and 213 individuals and 122 entities associated with Al-Qaida. At the same time, the List contained the names of 19 de-listed individuals and entities.

19. The Committee has continued to encourage all States to submit names and additional identifying information for inclusion on the List, and the Team has been active in its support. In the six months since the Monitoring Team submitted its fourth report on 31 January 2006, the Committee has approved submissions from Member States to add 10 individuals and four entities to the List.[14] The Committee did not de-list any individual or entity during this period.

A. Improving submissions for listing

20. There is still a need to improve the quality of submissions to the 1267 Committee. Although Member States can and should consult the Guidelines of the Committee for the Conduct of its Work (the Guidelines)[15] before submitting names, many States appear unclear about the most appropriate way to do so, or about the extent of information required. To assist Member States in this respect, the Committee has accepted the Monitoring Team's proposal for a standard cover sheet to form an integral part of submissions (see annex II). Use of the cover sheet should help ensure that States include all the information commonly required by the Committee to consider a listing request.

21. The cover sheet contains separate boxes for each type of useful identifying information, as well as for the usual bases for listing. Even though States are not obliged to fill every box, use of the standard cover sheet should assist States in proposing listings and the Committee in evaluating them.

B. Quality of the Consolidated List

22. As the Consolidated List is the cornerstone of the Al-Qaida/Taliban sanctions regime, it is essential that the quality of the names and the accompanying identifying information is as accurate as possible. Therefore it is as important to improve the quality of existing entries as it is to add (or de-list) names. There are still frequent complaints from many Member States that some entries on the List are inadequate or inaccurate, and several have provided additional identifying information in order to help improve them. Since the submission of the Team's fourth report (S/2006/154), several hundred of the Team's amendments, based on information provided by States, have been approved by

[13] See un.org/Docs/sc/committees/1267/pdflist.pdf.

[14] See press releases of 8 February (SC/8632) and 25 April 2006 (SC/8705). One press release regarding one individual remains to be issued as of 31 July 2006.

[15] The Guidelines are located at www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf.

the Committee.[16] The Team intends to continue to collect as much additional information as possible on selected entries on the List in order to make each one as complete as possible.

C. Changes in format

23. The Committee also approved several of the Team's proposals for improving the format of the Consolidated List. Importantly, it was decided to assign a permanent reference code to each name on the List, place the Taliban names in alphabetical order, and add to relevant entries on the List the name in the script used in original identification documents. These decisions were implemented on 25 July 2006.[17]

24. The permanent references consist of three letters and two numbers. The first letter, T or Q, indicates Taliban or Al-Qaida; the second letter, I or E, indicates individual or entity; the third letter represents the first letter of the last name. The first number represents the order in which the individual or entity was added to the Consolidated List, and the second number represents the year this was done.

25. The references do not change once they are assigned, and they will be maintained even if sanctions against that individual or entity are lifted and the individual or entity is placed in the 'de-listed' section. Member States are encouraged to make use of the permanent reference codes in their future communications with the Committee.

26. Since the inception of the Consolidated List, individuals in the Taliban section have been arranged according to their designation at the time the Taliban controlled much of the territory of Afghanistan, whereas individuals associated with Al-Qaida have been arranged alphabetically. The Team argued that this inconsistency complicated implementation and the Committee agreed to arrange both the Taliban and the Al-Qaida sections alphabetically.

27. The Team also transliterated for the Committee names of Al-Qaida individuals on the List into the relevant script. This was done to overcome problems caused by the lack of a universal standard for the transliteration of names and to help implementation, particularly where officials would need to guess how a name might have looked in the original script. The Committee, with the Team's assistance, has added the names as they would appear in the individuals' travel documents, and 158 individuals in the Al-Qaida section of the List are now also written in the original script (155 in Arabic and three in Cyrillic).[18] The Team recommends that when Member States propose the addition of a name for listing, where relevant they submit the name in the original script as well as in a Latin transliteration.

28. The Consolidated List currently has five sections: the first and second for Taliban-associated individuals and entities, the third and fourth for Al-Qaida-associated individuals and entities, and the

[16] See for example press release of 25 July 2006 (SC/8785).

[17] Ibid.

[18] Where the transliteration was not obvious, the Team sought advice from the submitting State. Names that appear to have errors in the Latin version will be transliterated when these have been resolved.

final section for individuals and entities removed from the List. The Team believes there is no reason to maintain the final section of the List as these parties are no longer subject to international sanctions, and merit no further action by Member States. The retention of the names tends to stigmatize them without any corresponding benefit to the implementation of sanctions or the prevention of terrorism. Comparable lists of terrorists[19] and their supporters do not include persons and groups after their formal de-listing. Therefore, the Team recommends that the Committee discontinue publishing the fifth part of the List, but direct the Secretariat and the Monitoring Team to retain this information. For the sake of transparency, the introductory pages to the List could continue to note the number of de-listed persons, as it does now.[20]

D. Guidance for searching the Consolidated List

29. The Team was tasked by the Committee to provide a paper on general guidelines to Member States on how best to conduct an effective search of the Consolidated List. The Team completed the paper and submitted it to the Committee for its consideration. The paper includes tips on how to avoid common mistakes when making searches. The Team recommends that, if approved, the paper should be placed on the Committee's website as a sort of 'User Guide'. As the Consolidated List itself is only in English, it also proposes that the paper be translated into the six official languages of the United Nations.

IV. Implementation of the sanctions

A. Issues of compliance

30. Member State compliance is often undermined by capacity problems, and it is for the States that lack capacity to identify their needs, prioritize them and bring them to the attention of potential assistance providers. For States with less interest in compliance, whether because they question the relevance of the sanctions, or for more complex political reasons, the Committee has to have a consistent message and develop a standard approach. It may be hard to judge what lies behind an apparent lack of compliance, but violations should not go un-remarked. Sometimes a State may need a quiet reminder of its obligations in order to tighten its procedures, but at other times, a more public encouragement might be necessary.

31. The Committee may need to decide what action to take in what circumstances. It should be relatively straightforward for the Committee to determine whether or not a violation has taken place because the sanctions regime is defined by Security Council resolutions; but the reasons behind any violation will influence the Committee's response. The international consensus against Al-Qaida and the Taliban remains firm, and the Committee will wish to preserve this. It will want to exhaust every possible avenue before allowing the situation to become confrontational. The intermediate steps should involve a close and confidential dialogue between the Committee and the State concerned, both directly and perhaps with the involvement of the Monitoring Team, to establish the facts and

[19] For example those used by the European Union and the United States.

[20] See www.un.org/Docs/sc/committees/1267/1267ListEng.htm.

illuminate the underlying reasons for non-compliance. As always, the Committee will have to work hard to avoid accusations of double standards.

B. Member State implementation measures

32. Resolution 1617 (2005) called on Member States to use a checklist to report by 1 March 2006 on action taken to implement the sanctions measures against individuals and entities added to the Consolidated List between 29 July 2005 and 31 January 2006. By the end of July, 53 States had returned their checklists, while six others had requested extensions.

33. The Team has, at the request of the Committee, prepared an initial assessment of the checklists submitted by 46 Member States as at 31 May 2006.[21] Most responding States did not provide additional details on the 24 new names added to the List during the reporting period. One State confirmed that additional assets had been frozen, and the overwhelming majority confirmed that the relevant names had been added to various national watch lists. Two States reported additional details on listed persons, such as location and other identifiers, while two other States complained about the difficulties of implementation due to insufficient or contradictory identifying data. One State noted that it could not add individuals to its computerized lists as long as no date of birth was provided. The Team understands that many other countries face similar problems with inadequately identified individuals.

34. It is clear that the Committee and the Team need to do more to publicize the checklist, but the number of completed forms suggests that States are still reluctant to report, even when the requirement is simple to fulfil. However, the Team believes that as well as providing some useful information to the Committee, the checklist also reminded States of their obligations pursuant to resolution 1617 (2005) and required them to consider whether they were implementing each aspect of the sanctions fully. The Team believes the Committee should continue to encourage States to complete and submit their checklists, if they have not already done so. Both with the first checklist and with any subsequent ones, which could be requested on an annual basis, the Team recommends that the Council may wish to consider that States be encouraged to complete them rather than obliged to. States that miss one year can then make a fuller report the next time around.

35. Because the Committee needs more information on listed individuals and entities to promote implementation, the Team also recommends that if the Committee continues to ask for checklists, it also ask more specifically for updated information on all or any of the names already on the List, and on the status of assets previously frozen, as well as on the location of listed individuals and entities, or any change in their status.

36. Apart from the checklists, States reported to the Team a number of new and innovative measures to improve implementation of the sanctions. Many of these were in the form of legislation, such as laws generally authorizing governments to implement all United Nations sanctions or to

[21] Seven Member States have submitted checklists since then and the Team will include information from them, and any others received, in the further written assessment requested by the Security Council under paragraph 17 of resolution 1617 (2005).

regulate the Internet (while guaranteeing free expression). Other innovations came in the form of practical enforcement measures, including finding ways to freeze an interest in a building partially owned by a listed party without interfering with non-listed co-owners or streamlining processes for expelling terrorists or other listed persons to their countries of origin (while complying with international asylum and refugee norms). The Team will continue to compile this information and report it to the Committee.

C. Listing and de-listing issues

37. Activity with respect to the fairness and transparency of listing and de-listing procedures has reached a crescendo during the six months since the Team's fourth report, with the distribution of a variety of relevant papers and a flurry of debate. At least three major studies have been released recently on the topic, in addition to the detailed recommendations of the Team in its previous reports[22] and the public pronouncements of numerous governments (see S/PV.5446 and S/PV.5474). The Committee has taken up this important issue as a central item on its agenda.

1. Academic and legal opinions

38. In March 2006, as part of a process instituted by the Governments of Germany, Sweden and Switzerland, the Watson Institute for International Studies at Brown University released a report entitled "Strengthening Targeted Sanctions Through Fair and Clear Procedures."[23] The 58-page report outlined the human rights concerns of targeted sanctions programmes, such as the Al-Qaida/Taliban regime, and the current practices of all United Nations Security Council sanctions committees, and offered recommendations to enhance due process, such as for the Council and committees to: (1) detail the criteria for listing in resolutions; (2) establish general standards for statements of the case for listings; (3) extend the time period for review of listing proposals to five to 10 working days; (4) require that targets be notified, to the extent possible, of their listing, the sanctions and procedures for de-listing and exemptions, and receive a redacted statement of case and basis for listing; (5) designate a focal point within the United Nations Secretariat to handle de-listing and exemption requests and to notify targets of listing; (6) establish a biennial review of listings; (7) set time periods to respond to listing, de-listing and exemption requests and to establish clear standards for de-listing; and (8) improve websites, issue more frequent press statements and broadly circulate procedures of the committees. The study also discussed various options for a review mechanism, proposing that the Council consider establishing one under the authority of the Security Council (such as via an expansion of the Monitoring Team's mandate or designation of an ombudsman or a panel of experts), creating an independent arbitral panel, or allowing judicial review of de-listing petitions.[24]

[22] For a summary of the Team's recommendations in this area, see S/2006/154, paras. 48-50 and 60.

[23] The report is located at http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf. It was circulated to the Security Council as S/2006/331.

[24] The three Governments that commissioned the report ultimately endorsed most of its conclusions. For the Governments' views concerning the study, see S/PV.5446, pp. 27-29. These Governments met the Committee to present the report and its recommendations on 15 May 2006.

39. Also in March, the Council of Europe's Committee of Legal Advisors on Public International Law (CAHDI) convened to discuss national implementation measures related to United Nations sanctions and respect for human rights, as well as to hear the presentation of a report by Professor Iain Cameron of the University of Uppsala (Sweden). In July, the CAHDI publicly released the 28-page report by Professor Cameron, which examines the due process concerns arising from the Al-Qaida/Taliban sanctions and other sanctions programmes and analyzes the relevant human rights standards and obligations under European and international law. Professor Cameron concludes that State parties to the European Convention on Human Rights violate it when they act within the Security Council and/or in their national capacities to implement sanctions that violate fundamental rights. It should be noted that the views expressed in the study are solely those of the author and do not necessarily reflect the views of the Council of Europe or its member states.[25] The CAHDI is scheduled to re-convene in September to continue its discussions on the matter.[26]

40. These issues were subsequently addressed by the Legal Counsel of the United Nations who, during an open thematic debate of the Security Council on the subject of "Strengthening International Law: Rule of Law and the Maintenance of International Peace and Security" on 22 June 2006, stated the Secretary-General's position on the legal requirements to enhance the efficiency and credibility of United Nations sanctions regimes.

41. He declared that "minimum standards required to ensure fair and clear procedures would include the following four basic elements: ... First, a person against whom measures have been taken by the Council has the right to be informed of those measures and to know the case against him or her as soon as and to the extent possible. The notification should include a statement of the case and information as to how requests for review and exemptions may be made. An adequate statement of the case requires the prior determination of clear criteria for listing. Secondly, such a person has the right to be heard, via submissions in writing, within a reasonable time by the relevant decision-making body. That right should include the ability to directly access the decision-making body, possibly through a focal point in the Secretariat, as well as the right to be assisted or represented by counsel. Time limits should be set for the consideration of the case. Thirdly, such a person has the right to review by an effective review mechanism. The effectiveness of that mechanism will depend on its impartiality, degree of independence and ability to provide an effective remedy, including the lifting of the measure and/or, under specific conditions to be determined, compensation. Fourthly, the Security Council should, possibly through its Committees, periodically review on its own initiative targeted individual sanctions, especially the freezing of assets, in order to mitigate the risk of violating the right to property and related human rights. The frequency of such review should be proportionate to the rights and interests involved" (S/PV.5474, p. 5).

[25] Iain Cameron, The European Convention on Human Rights, Due Process and United Nations Security Council Counter-Terrorism Sanctions, located at www.coe.int/t/e/legal_affairs/legal_co-operation/public_international_law/Texts_&_Documents/2006/I%20Cameron%20Report%2006.pdf.

[26] In order to foster the exchange of information, in 2005, the CAHDI set up a database on implementation of United Nations sanctions and respect for human rights that contains reports submitted by delegations. The database, located at www.coe.int/cahdi, is restricted and available only to members of the CAHDI.

42. Responding to the World Summit Outcome document's call for the "Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist" for the sanctions committees (A/RES/60/1, para. 109), the Secretary-General had tasked Office of Legal Affairs (OLA) to begin an inter-departmental process to consider the issue. The Office responded, in part, by commissioning a study from Doctor Bardo Fassbender of Humboldt University Berlin that was published on the OLA website, although without United Nations' endorsement.[27] The study concluded that "every measure having a negative impact on human rights and freedoms of a particular group or category of persons must be necessary and proportionate to the aim the measure is meant to achieve." With respect to the United Nations targeted sanctions, he concluded that the Security Council is obliged to ensure that due process is provided for and that listed parties should have the rights: (1) to be informed of the measures taken against them as soon as possible, without thwarting the purposes of the sanctions; (2) to be heard by the Council or subsidiary body within a reasonable time; (3) to be advised and represented in dealing with the Council; and (4) to have an effective remedy available via an impartial institution or body previously established. The study notes that "the exact scope and intensity of those ... rights of due process of individuals whose rights and freedoms are directly affected by acts of the United Nations is not generally predefined... In the first place, such a determination of standards is a responsibility of the organ the action of which is directly affecting rights and freedoms of individuals."[28]

43. Capping off the academic and legal commentary were various judicial decisions from around the world (for details of these cases, see annex III), including two significant judgements issued in mid-July by the Court of First Instance of the European Communities. In those cases, two persons challenged the addition of their names to the list updated by the Commission of the European Communities (following their listing by the Committee) and the consequent application of sanctions against them (see also S/2005/83, paras. 5-6). In accordance with similar decisions in September 2005 (S/2006/154, annex paras. 4-7), the Court rejected the challenges, finding that the European Community may order assets freezing as a measure to battle international terrorism and that the sanctions regime adequately protects individual rights, given the Committee's Guidelines allowing for individuals to seek humanitarian exceptions and de-listing through petitions submitted to their national governments, which then may be sent on to the relevant Security Council Committee. The Court examined the de-listing procedure established by the Committee and noted that States: (1) must permit listed persons to argue their case before national authorities; (2) may not refuse to bring a de-listing petition to the Committee based on a lack of precise information, given that the specific reasons for their listings may have been kept confidential; and (3) must act promptly to ensure that listed persons' cases, where justified, are presented fairly, impartially and without delay to the

[27] Bardo Fassbender, Targeted Sanctions and Due Process, 20 March 2006, located at www.un.org/law/counsel/info.htm. The OLA website containing the study notes that "The views expressed in this study are solely those of the author and do not necessarily reflect the views of the United Nations."

[28] Ibid. pp. 7-8.

Committee. The court noted that listed persons may sue their national authorities for any wrongful decision not to submit a de-listing petition to the Committee.[29]

2. Committee decisions

44. Over the past year, the Council and Committee approved various recommendations to improve the fairness and transparency of the Al-Qaida/Taliban sanctions, with many such improvements detailed in the Team's last report (S/2006/154, para. 41). In recent months, these matters have occupied a greater focus within the Committee, resulting in a number of decisions that enhance both implementation and due process for individuals and entities who are or may be the target of sanctions.

45. Significant recommendations that the Committee recently considered were to provide additional guidance and criteria for listing proposals and the statements of case supporting them, as well as to allow the non-confidential portion of that information to be released in certain circumstances. The Committee recently developed a standardized cover sheet for listings, which, as the Team has explained (see section III.A, above), will assist States in submitting listing proposals to the Committee, as well as offer guidance on the requisite statements of case for listing. To enhance transparency, the cover sheet requests that States proposing a listing indicate whether relevant sections of the listing submission and statement of case may be released publicly or to other States, upon request.

46. The Committee also heeded calls to improve procedures for removing the names of deceased individuals from the Consolidated List. In April, the Committee sent a Note Verbale to States explaining the process: "The Committee will consider submissions from States to remove the names of deceased individuals from the Consolidated List on a case by case basis. The submitting State should forward the name of the deceased person on the List to the Committee, together with a Statement of Case supporting the de-listing request. This will usually include a death certificate or similar official documentation confirming the death. The submitting State should also ascertain and inform the Committee whether or not any legal beneficiary of the deceased's estate, or any joint owner of his assets, is also on the Consolidated List."

47. The Committee transmitted another Note Verbale to States in April to provide greater information and transparency about the humanitarian exceptions procedure provided for under the sanctions regime. The note explained in detail States' obligations and the opportunities for listed individuals and entities under resolution 1452 (2002), which allows for the limited unfreezing of assets and the payment of basic and extraordinary expenses under certain circumstances (see section IV.D, below).

48. Finally, in December 2005, the Committee revised portions of its Guidelines and, in so doing, extended the usual time for considering listing submissions and other matters from two business days

[29] See Judgments of the Court of First Instance of the European Communities in Case T-253/02 and Case T-49/04, located at curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-253/02 and curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-49/04. For more information, see the Court's press release number 57/06, 12 July 2006, located at curia.europa.eu/en/actu/communiques/cp06/aff/cp060057en.pdf.

to five.[30] The Watson Institute study, for example, had encouraged such an increase, emphasizing that: "It is important that the members of sanctions committees have sufficient time to review proposals for listing, to ensure that targeted sanctions are applied in a nonarbitrary and impartial manner."[31]

49. These decisions represent improvements to the sanctions regime that enhance implementation efforts and fairness. They serve as a preamble to the main task currently before the Committee: revising its Guidelines regarding listing and de-listing, as paragraph 18 of resolution 1617 (2005) requests. The Committee's discussions on this matter have been bolstered by written proposals from three Committee Members (Denmark, France and the United States).[32] As the Team noted in its previous report (S/2006/154, para. 46), Denmark recommended that the Committee establish an independent review mechanism, in the form of an ombudsman, which could accept petitions directly from listed parties who claim they were unjustly included on the List and are unable to get de-listed. The ombudsman would have the authority to consider those petitions, as well as other cases raised on his or her own initiative, and make a recommendation for action to the Committee.

50. France suggested the creation of a focal point within the United Nations Secretariat to receive requests for de-listing and humanitarian exemptions directly from individuals and entities listed under any United Nations sanctions regime, instead of having such requests submitted through the listed party's government of residence or citizenship, as required by the 1267 Committee's current procedures. The focal point would serve as a contact point for listed individuals and entities, providing them an acknowledgement of receipt of the request as well as the ultimate decision of the relevant Sanctions Committee.

51. The United States recommended that Member States be encouraged to establish national mechanisms to identify candidates for submission to the Committee and to develop processes for handling de-listing petitions. It also suggested that the Secretariat send a notification, two weeks after a listing, to the State(s) of residence and/or citizenship, reminding them to inform the listed party and including a copy of the publicly releasable statement of case as part of the notification. For de-listing, the United States proposed to enlarge the number of States eligible to submit de-listing petitions to allow a listed party to transmit a petition to his State of residence or citizenship, to the designating State or to any State which had frozen his assets, and, if none was willing to endorse the petition, to approach any member of the Security Council to seek its support. The United States also proposed that States which received a de-listing petition should be encouraged to notify the Committee upon their receipt of the petition and, no matter whether they decided to support it, to forward the petition to the Committee.

52. Considering these proposals, along with the recommendations from the Team's prior reports, the Committee focused its work in June and July primarily on listing recommendations for the

[30] Guidelines, as revised on 21 December 2005, section 4(b).

[31] Watson Institute Study, p. 39. The study urged all sanctions committees to extend their review periods for listing proposals to between five and 10 working days.

[32] In addition, Japan offered written comments on various listing recommendations before the Committee.

Guidelines. It intends to continue its considerations, with the focus shifting to de-listing, when it reconvenes in September.

D. Humanitarian exceptions

53. In its fourth report, the Team described the exceptions to the sanctions allowed by resolution 1452 (2002) for basic expenses, as well as extraordinary ones, under certain circumstances (S/2006/154, paras. 51-60). The Team noted its concern that, in the more than three years since the passage of the resolution, States had submitted only 29 petitions for so-called "humanitarian exceptions" for 23 individuals and two entities, despite the fact that the List contained at the time 345 individuals and 119 entities.[33] These petitions had come from just eight States (all but two from Europe), and the Team recommended that the Committee emphasize the obligatory nature of resolution 1452 (2002) to States.

54. Subsequently, in April 2006, the Committee sent a Note Verbale to all Member States describing the exceptions permitted under resolution 1452 (2002) and noting that "in most cases" the Committee has "responded positively" to petitions for exceptions. (Indeed, the Team had noted in its report that the Committee "approved"[34] 25 of the 29 petitions it received, one was withdrawn and three remained under consideration.) The Note Verbale emphasized "that Member States can only release funds, even for basic needs, if they inform the Committee of their intention to do so."

55. The Committee's action has had an impact. In the six-month period since the Team's fourth report, States submitted 23 notifications for the payment of basic expenses for 15 listed individuals (three with double petitions) and for five families of listed persons.[35] The Committee approved 18 of them, as well as resolved two cases regarding an individual that had been under consideration at the time of the previous report.[36] Of the 18, the Committee approved 13 within the 48-hour no-objection period specified in the resolution and the remaining five within between one week and two months.[37] This leaves five of the new petitions,[38] plus the one petition for an entity that was mentioned in the previous report (S/2006/154, para. 56), still under consideration. No resolution 1452 (2002) petition has ever been denied, although one for an entity has been pending for a lengthy period of time.

56. The Team believes the increased rate of petitions received (and approved) is a good sign, but notes that the number of States submitting petitions still has not changed; in fact, of the 23 new petitions, the United Kingdom submitted 13 and Germany nine. The Team, therefore, reiterates its

[33] The Consolidated List as updated on 18 January 2006.

[34] For simplicity, the Team uses the term "approved," even though paragraph 1(a) of the resolution describes the requisite Committee action as "the absence of a negative decision."

[35] A Member State expressed concern that State benefits paid to a listed person's family could be considered to be indirectly for his benefit. However, since the State also viewed that the provision of such benefits met the criteria in paragraph 1(a) of resolution 1452 (2002), it informed the Committee of its intention to make the payments.

[36] The Secretariat and the Team considered the petitions submitted on behalf of the same individual as two separate requests, but the Committee apparently handled them together as one.

[37] One approved within one week, one within two weeks, and three within two months.

[38] One of the five petitions under consideration on the date of this report (31 July 2006) was still under the regular 48-hour rule.

view that the Council and Committee might wish to continue reminding States to comply with the obligations of resolution 1452 (2002) and even to encourage them to examine how listed individuals are able to live in their territories if no petition has been submitted for them.

Box 1
Germany's use of resolution 1452 (2002)

Although the Team believes that many States may overlook or ignore the obligations of resolution 1452 (2002), two notable exceptions are Germany and the United Kingdom, which together account for over 75 per cent of the petitions for humanitarian exceptions submitted to the Committee. Of the 13 listed individuals known currently to reside in Germany, the Government has submitted basic expense notifications for all but three (who remain incarcerated and have not requested any exceptions).

Pursuant to paragraph 5 of resolution 1617 (2005), the German Government informs all listed individuals in its territory about the relevant provisions of resolution 1452 (2002). Once the listed person or his representatives submit a petition to the Government, the authorities examine it, assessing it based on social benefit payments as indicators, and then forward it as a notification to the Committee, generally within a few days of receipt. In most cases, Germany informs the Committee that it intends to provide the listed person with social benefits or to allow him to receive pay for work undertaken while incarcerated (nine of the 11 petitions submitted have been for persons in custody).

For individuals who are not incarcerated, the Bundesbank will instruct the social welfare authorities to transfer benefits to the frozen accounts of listed individuals once the Committee has been properly notified. The Bundesbank also submits an authorisation to the respective credit institutions and gives instructions allowing regular payments, such as for rent and insurance, to be conducted by means of a bank transfer or direct debit.

Source: German authorities.

57. While paragraph 1(b) of resolution 1452 (2002) requires that the Committee approve any expenditures for "extraordinary expenses," paragraph 1(a) provides that the assets freeze sanctions do not apply where a State has determined the expenses to be "necessary for certain basic expenses . . . in the absence of a negative decision by the Committee within 48 hours of . . . notification." This suggests that the Committee must deny a petition for basic expenses within two days or else it will be considered approved.

58. The Committee has sometimes found this period too short for a proper examination of a petition, or it may need more information from a State; but resolution 1452 (2002) appears to have been designed to ensure quick decision-making for basic expenses, such as food and shelter. Accordingly, the Team suggests that the Council and the Committee might wish to re-examine resolution 1452 (2002) in light of the Committee's experience, to guarantee that in cases in which the Committee might not wish to approve a particular request for basic expenses within 48 hours - either

because the petition lacks the necessary detail or seeks items that do not appear "basic" - the State still is permitted to authorize and unfreeze immediately a nominal amount of money or goods for the fundamental necessities of life (perhaps in accord with national social benefit payments). Such a process not only would ensure basic human rights, but it could also enhance implementation of the sanctions by, for example, reducing criticisms of the sanctions programme and the threat of adverse court judgements.

V. Assets freeze

A. Summary of assets freezing actions

1. The current value of frozen assets

59. According to information provided by Member States, as of late July 2006, $91.4 million, mainly in the form of bank accounts, had been frozen by 35 Member States under the Al-Qaida/Taliban sanctions regime. This compares with $93.4 million at the time of the Team's last report in January 2006 (S/2006/154, para. 61).[39] Member States have also frozen economic resources such as operating businesses,[40] real estate[41] and other forms of value such as office equipment. This total will not be completely accurate because there is no current obligation on States to report additional freezing actions against listed persons, nor to reveal the amount frozen.

60. Nor does the amount take into account exceptions granted by the Committee under resolution 1452 (2002) or the fact that there is no standard system for valuing assets. In addition, States may have frozen all the interests of listed parties in entities, based on their percentage share, but only reported the relevant portion of the entities' bank accounts. Although at least one State[42] has attempted to estimate the value of sequestrated real estate, it is unclear if a valuation based on acquisition cost is the most appropriate. The Team recommends that the Council and the Committee request States to report to the Committee whenever new assets are frozen. States could also be asked to indicate the value of an individual's frozen assets when notifying or applying for an exception under resolution 1452 (2002).

2. The impact of new listings

61. The Team notes that there have been two very distinct periods in the history of the assets freeze: the initial crackdown following the terrorist attacks in the United States on 11 September 2001, and the subsequent period from mid-2002. The great majority of the assets reported as frozen were identified in the initial period; since then the amount has hardly changed, despite several additions and amendments to the List.

[39] The variation results from up-dates from States and exchange rate differences.
[40] For example: Italy's arrangement for Hotel Nasco as approved by the Committee.
[41] For example: Albania has sequestrated real estate belonging to Yasin Al-Qadi (listed as QI.A.22.011).
[42] Albania valued sequestrated assets belonging to Al-Qadi on a cost basis as determined by an expert.

62. For example, the names of 10 individuals and four entities have been added to the List since 18 January 2006. These names were proposed by six States and a further five States are connected to them by virtue of residence or nationality. In addition, the Committee approved amendments to the list, affecting several individuals and one entity. However, only an additional €492 ($620) worth of assets has been reported as frozen over the same period by one State for one individual.

63. The lack of any positive correlation between new listings and an increase in frozen assets as a result does not necessarily question the value of listing, but as the assets freeze is the most effective and easiest of the measures to enforce, more needs to be done to target terrorist financiers (S/2006/154, para. 64), trace their assets and find ways to encourage States to expand the reach of the financial sanctions beyond bank accounts or other easily identified assets.

3. Variations in the implementation of the assets freeze

64. States are obliged to freeze the assets of individuals and entities on the Consolidated List, but they may choose the manner in which to do so. The variations in the methods used give rise to different challenges and change the effectiveness and proportionality of the measures. Especially where economic resources are concerned, States appear to have developed a number of different techniques which in some cases have necessitated the passage of new laws and the establishment of new administrative institutions or national agencies to facilitate implementation. The Team proposes to draw up guidelines on best practices on this issue.

65. There is no consistency in the way that States have applied the assets freeze to the business interests of listed individuals, especially when these are registered companies with limited liability. Some States have frozen an entity's assets in proportion to the share owned by a listed individual,[43] and at the same time suspended any accompanying right to influence the management of the entity, thus allowing it to continue in operation. Others have pierced the corporate veil and frozen not only the shares owned by the listed individual, but also the bank accounts and other assets of the entity. The result has almost always been to cripple operations and cause the eventual closure of the affected entity.

66. However, in January 2006, the Committee approved a proposal presented by the Italian Government under which it would implement the assets freeze against a listed entity while allowing it to continue in operation. The Team believes that to the extent it may be practical, similar treatment could be permitted for unlisted entities owned by listed parties as, in theory at least, they are less likely to be involved in the financing of terrorism than listed entities.

[43] According to Bosnia and Herzegovina authorities, Yasin Al-Qadi owned shares valued at KM 3,413,300 ($2,222,677) in a bank registered in the State. The Government authorities implemented the assets freeze by suspending his ownership rights derived from the shares and by ensuring that he cannot transfer ownership.

Box 2
Albania's 'Twin Towers'; third-party interests and challenges for assets freezing

The Twin Towers in Tirana is a multi-million dollar (estimated at $13 million) investment project, completed in late 2005, comprising two ultra modern high-rise buildings in one location, with prime office accommodation and residential apartments.

The construction of the Twin Towers was funded by Albanian businesspeople in partnership with the listed Yasin Al-Qadi. The co-ownership of the project made implementing the assets freeze against Al-Qadi particularly complicated.

Initially the entire project was sequestered by the Albanian authorities until other investors took legal action. With the involvement of the court, an evaluation expert was appointed and on the basis of his recommendation, the floor area of the Twin Towers was apportioned between all financiers according to the level of their investment. Al-Qadi's share of the floor area was calculated as the equivalent of 18 apartments, representing about 15 per cent of the total floor area. These were placed under a sequestration order by the Ministry of Finance, which retains the keys.

Al-Qadi's close associate Abdul Latif Saleh is also listed. He owns shares in Al-Qadi's companies and four apartments representing his interest in the Twin Towers have also been placed under a sequestration order by the Albanian authorities.

Source: Albanian authorities.

4. Avoiding delays in freezing assets

67. A successful assets freeze requires careful investigation and precise identification of its targets. Inevitably there is a delay between the initial suspicion that an individual or entity is involved in the financing or other support of terrorism, and the conclusion of the investigation that may lead to a submission to the Committee to have the individual or entity added to the Consolidated List. Subsequently, a further delay occurs while the Committee considers the submission. Then, especially in the case of entities with branches in several countries, there will be a further delay before assets are identified and frozen in jurisdictions beyond that of the submitting State.

68. In States that rely on a Committee listing to freeze assets, assets may be moved before the listing is agreed and published. This risk is not present in States that have sufficient legislation to freeze assets in accordance with resolution 1373 (2001), but in such States there is far less imperative to achieve a resolution 1267 (1999) listing as the assets are already frozen. States need to remember that any individual or entity suspected of financing terrorism is likely to be familiar with moving money abroad and to have assets elsewhere. Accordingly, freezing under the Al-Qaida/Taliban regime is a natural and obvious adjunct to freezing under resolution 1373 (2001) or other national legislation.

69. Where an entity has branches or sister organizations in more than one jurisdiction, a freezing action by one State will inevitably alert that entity that other States may shortly follow suit. In this case, it will most likely ensure that its assets are hidden or transferred to different ownership. The example of Al-Haramain illustrates this point. Almost all its branches ended up on the Consolidated List,[44] but they were listed piecemeal, with the unsurprising result that in most jurisdictions no significant assets were found. It is also significant that so far as the Team is aware, relatively few individuals have had personal assets, such as a bank account, rather than business interests, frozen in more than one jurisdiction.[45]

70. The Team recommends that to begin to address this problem, the Committee, where possible and appropriate, should identify and include all branches when adding an entity to the List. If these are not known, the listing should clearly state that it includes all branches and subsidiaries, wherever located.

B. Company profiles

71. A related problem occurs when listed individuals have widespread investments. For example, the Team notes that 'Nasco' forms part of the name of many commercial entities that make up the multinational business empire of the listed Idris Ahmed Nasreddin.[46] The Team believes that States should pay attention to such correlations when searching for the assets of listed individuals and recommends that they examine their records or use the databases of company profilers to investigate the ownership of apparently related companies.[47]

72. With regard to Nasco and Idris Ahmed Nasreddin, according to official sources,[48] authorities in Nigeria have frozen assets and properties worth $787,402 belonging to him and his companies, including Nasco Group Nig Limited. At present the Team does not have full details of the nature or type of these assets, and is in touch with the Government of Nigeria about this.

73. In addition, in answer to its enquiries, a Member State told the Team that Idris Ahmed Nasreddin, or his known associates, held executive management and director positions in 10 entities incorporated and domiciled in that State. However, he is not registered as owner or subscriber to the capital of these companies. According to the authorities of the State concerned, six of these companies have now been dissolved.

[44] Al-Haramain Foundation has 14 entities listed as branches.

[45] For example, Shafiq al-Ayadi has assets frozen in Ireland, the United Kingdom, and Bosnia and Herzegovina.

[46] Hotel Nasco (QE.H.80.02.), Nasco Nasreddin Holding A.S. (QE.N.81.02.), Nascoservice S.R.L. (QE.N.82.02.), Nascotex S.A (QE.N.83.02.), and Nasreddin Company Nasco Sas Di Ahmed Idris Nasreddin EC (QE.N.84.02.).

[47] For example, International Company Profile.

[48] 18th May 2006 Statement of Nuhu Ribadu, Executive Chairman, Economic & Financial Crimes Commission, Federal Republic of Nigeria before the Committee on International Relations, United States House of Representatives, Washington, DC.

The transfer of assets by a listed entity

74. In a number of Member States the Team has found both pre-listing and post-listing transfers by entities of non-financial assets, such as offices and equipment, as well as the transfer of an entity's overt business, to other existing or newly founded bodies. In many of these cases the authorities of the States concerned have explained that the entities to which these transfers have been made are not involved in terrorism or other questionable activity, and, as a result, these States have seen no reason to track and freeze the assets concerned. The Team recommends that the Committee advise States that any recipient of the assets of a listed entity close to the time of listing should be the subject of careful scrutiny. The Committee should also emphasise that there is no cut-off date when it comes to identifying assets subject to freezing measures. All the assets of an entity, whenever acquired, should be frozen on listing, and any assets transferred, whether before or after listing, should be returned if it is concluded that the transfers were made to avoid freezing.

Box 3
The transfer of assets between charities

The offices of Al-Haramain & Al Masjed Al-Aqsa Charity Foundation in Bosnia and Herzegovina were closed by the authorities when the entity appeared on the Consolidated List, and its bank accounts remain frozen. However, its other assets, such as its premises, and its humanitarian activities, were transferred before its listing to a new entity called Sretna Buducnost that operates from the same offices with some of the same staff as ran Al-Haramain & Al Masjed Al-Aqsa Charity Foundation.

So far the Bosnia and Herzegovina authorities are satisfied that Sretna is not involved in any illegal activity but rather undertakes humanitarian work such as supporting about 200 to 400 orphans. Sretna's founders include two Members of Parliament, which, the Government says, provides additional comfort.

Source: Bosnian authorities.

C. Factors affecting implementation

1. Financial networks and investigation of financial footprints

75. The identification of a terrorist financier and the investigation of his contacts and activities can often provide much useful information about a terrorist network. At the same time, these investigations can identify assets which have been transferred or hidden prior to listing. As stated above, the Team believes that States should examine such transfers closely and, subject to national legislation, freeze assets when it appears that a listed party has transferred them with the intention of escaping the assets freeze.

76. The Team also believes that implementation would be more thorough if the general public were more aware of the sanctions regime and if banks applied "know your customer" rules to both

new and existing customers. This would make it harder for listed individuals to use the accounts of others,[49] and would alert financial institutions beyond those regularly receiving updates of the List to the possibility of their use by terrorists.

2. Use of front organizations and off-shore companies

77. Transactions between companies, especially when they are based in separate jurisdictions, are often made without the identity of the owners being revealed. This is even more likely when one or both parties are located in off-shore financial centres with strict confidentiality rules. States continue to report difficulties in obtaining information about the owners of companies based in other jurisdictions and this has affected the ability of national authorities and banks to ensure that payments are not made to corporations owned or controlled by listed parties.

78. States hosting off-shore companies report that they continue to implement the assets freeze measures and, in some cases, have actually frozen financial assets pursuant to resolution 1617 (2005) and relevant preceding resolutions. However, it might help implementation if entities doing business outside the jurisdiction in which they were incorporated had to have a certificate to show that there was no adverse information about them in relation to any existing United Nations sanctions regime.

D. Stopping terrorist financing at source

1. Business registration bureaux

79. As with the other sanctions measures, the assets freeze depends on the efficient distribution of the Consolidated List. This should not just mean prompt dissemination to the main financial entities and to designated non-financial businesses and professions (DNFBPs), which is the practice of many States. The Team believes that States should also consider what other channels terrorist financiers might use and raise awareness of the assets freeze among national authorities responsible for business registrations. The exclusion of business registration offices from the dissemination of the List, and their absence from meetings with national authorities during the Team's country visits, suggests that there is an unplugged gap through which terrorist financiers may slip.

80. The Team recommends that the Committee highlight to States the importance of increasing awareness of the assets freeze measures among national authorities, including those responsible for business registrations.

2. Risks associated with the informal economy

81. The significant increase in the regulation of the financial sector since 2001 has reduced its vulnerability to terrorist financing; but the ease with which funds can be raised outside the financial sector and moved informally through hawala systems or cash couriers, or by means of goods, has made the significant amount of work in the formal financial sector appear disproportionate. The Team

[49] Authorities in Croatia told the Team that they had frozen an account belonging to an unlisted person because they found that a listed person was using it.

believes that States and international organizations should spend more time tracking the way that the Taliban and Al-Qaida are currently funded. The Team believes that solid knowledge in this area is seriously lacking.

82. The Team observes that some States in regions where the terrorist threat is high are among those where it is most difficult to register commercial enterprises, as well as to do business formally.[50] The consequence has been that entrepreneurs in several of these jurisdictions, in particular in low-income countries, have frequently opted to operate informally, which makes it extremely difficult for authorities to monitor financial operations, including those used to raise funds for terrorist activities. While in paragraph 4 of resolution 1526 (2004) the Council recognized the risks associated with informal transfer systems, it has not as yet mentioned the informal economy as an area of concern.

E. The role of the private sector

83. Effective implementation of the assets freeze requires the cooperation of the private sector. If "know your customer" rules, and requirements to file suspicious transaction reports, are regarded by banks only as an unwelcome and expensive chore, with the main concern being to avoid reprimands or fines by national regulatory authorities and negative consequences for the bank's commercial reputation, they are unlikely to be thorough or useful. This is even more the case when banks try to minimise the cost of following the rules and fail to provide proper training to their staff or adequate resources to support them. Even banks that wish to provide useful information and contribute to national and international efforts to counter terrorist financing will find it hard to do so unless they are able to give their staff clear guidance about what to look for.

84. Financial institutions have complained that they get too little guidance or feedback from national authorities. Part of the reason for this is that the national authorities with which they deal may not themselves have investigated terrorist activities and so do not necessarily know what indicators might signify terrorist financing activity. The Team believes that there is room for a closer working relationship between the public and private sector, both nationally and internationally, and a need to share information on terrorist financing more broadly.

85. To maximise the engagement of the private sector and to encourage a greater contribution to effective implementation of the assets freeze, the Team intends to contact a range of banks and bankers' associations in all parts of the world to examine their experiences with implementation, both positive and negative, in order to identify possible improvements and best practices.

VI. Travel ban

A. Overview

86. Inadequate border security is widespread and is not only of concern to counter-terrorism officials; many other kinds of criminality benefit from the lack of state capacity to prevent illegal

[50] The degree of difficulty as measured by the "ease of doing business ranking" chart in World Bank, Doing Business 2006, located at www.doingbusiness.org/documents/DoingBusines2006_fullreport.pdf.

border crossings, whether through the use of false papers or by avoiding checkpoints altogether. Many States have borders that do not follow any geographical feature, are hard to define and mean nothing to local tribes that may straddle them. States continue to report that equipment and training for border security measures are among the greatest of their assistance needs. The Team regularly transmits these requests to the Committee and to the experts working with the Counter-Terrorism Committee (CTC), and encourages the Committee(s) to support initiatives in this area as a matter of priority.

B. Implementation of the travel ban

87. In areas of conflict, such as Afghanistan, Iraq and Somalia, where there is no effective border control, it is impossible to implement the travel ban and to be sure whether or not listed individuals have travelled. Allegations of travel from these areas have been made in the last six months but the Team has been unable to confirm that they took place.

88. In monitoring the illicit movement of persons, the Team believes that such travel frequently occurs over unmanned stretches of borders or through manned border stations with the use of fraudulent, forged or stolen travel documents. The Team continues to applaud ongoing efforts to alleviate both problems, first, by increasing national monitoring and inspection mechanisms along borders, second, by confiscating (and reporting) any travel document that is found to be lost, stolen or fraudulent, and, third, through tightening controls on travel documents (including by issuing modernized documents utilising biometric standards) and heightening information-sharing regarding such documents.[51]

89. On the latter point, the Team continues to recommend that States participate actively in Interpol's Stolen and Lost Travel Documents Database. As of July 2006, 109 States, and the United Nations Interim Administration Mission in Kosovo (UNMIK), participate in this international database, an increase from 75 a year before. The database now contains information on more than 11.8 million stolen and lost travel documents. Similar initiatives at the regional level are encouraging; the Asia-Pacific Economic Cooperation (APEC) Regional Movement Alert List (RMAL), for example, allows participating countries to detect documents as lost or stolen and to monitor the movement of known or suspected terrorists and other persons of concern.[52]

[51] Information-sharing among States regarding lost or stolen travel documents can be effective only if individuals report the loss or theft of their travel documents in the first place. The Team recommends that the Council and Committee endorse the creation of regional or national programmes that encourage citizens to report immediately the loss or theft of these documents.

[52] United States Border Authority presentation to Counter-Terrorism Committee Executive Directorate (CTED) and the Team, June 2006. See also usinfo.state.gov/eap/Archive/2006/Apr/04-599958.html.

Box 4

Instant access to Interpol's Stolen and Lost Travel Documents Database

In December 2005, Interpol initiated a pilot project with Switzerland that significantly expands the ability of Government officers to detect stolen and lost travel documents. Although 109 States currently contribute to Interpol's Stolen and Lost Travel Documents Database through the Interpol National Central Bureau (NCB) in their capitals, Switzerland now provides real time access to the Interpol database not only to its NCB, but also to its 20,000 federal agents at border control points, customs and immigration offices, and embassies and consulates, enabling officers to verify instantly if a document is stolen or lost.

In the first six months of operation, Swiss officers have conducted nearly 500 times more searches of the Interpol database than before and detected almost double the number of false documents than all of the other 183 Interpol member countries combined. This represents a significant boost to law enforcement efforts to prevent the movement of terrorists and other criminal elements.

Source: Interpol. See: www.interpol.int/Public/ICPO/PressReleases/PR2006/PR200615.asp (media release 01-05-2006).

90. During its travels, the Team occasionally conducts random spot-checks at border points to assess the degree of inclusion of the Consolidated List into the watch lists of States. The results generally are encouraging, but there is need for improvement. Even in States whose authorities assure the Team that the Consolidated List is fully incorporated into national watch lists, the Team frequently finds omissions. Some names or aliases may not alert a border control point because they were input incorrectly; a simple typographical error or misspelling may allow a listed person or other terrorist to circumvent national and international restrictions. In other cases, the officials responsible for implementation of the travel ban may decide that the entire Consolidated List need not be included in the national watch list, because they consider it unlikely that certain listed persons would travel to the particular country.

91. The Team cautions against such an approach. Many of the people on the list are global terrorists or their supporters, and, especially given the abundant and efficient modes of modern travel, there may be no geographical limit to their movements. For example, in one State where officials included only part of the Consolidated List into the national watch list, an inspection revealed that a listed person whom authorities believed to be an unlikely candidate for travel to the country actually had visited it years before. Therefore, the Team recommends that the Council and Committee encourage States not only to review their border control systems to reduce the possibilities of human error, but also to ensure that the entire Consolidated List has been incorporated into national watch lists, where feasible.

92. Yet, the Consolidated List should be considered a two-way street. States should take the information on the List to use for their own implementation and counter-terrorism efforts, but they should also contribute to it, particularly with respect to data relating to the travel ban. The Team

regularly finds examples where States have extradited or expelled listed persons from their territories, or released them from prison, but have made no attempt to notify the Committee in order to update the List. The Committee's joint initiatives with Interpol may improve this situation (see section VI.C, below), but the Team continues to recommend that the Council and Committee encourage States to inform the Committee about the movement of persons on the List, especially when extraditing or expelling them to another country, or when the risk of their movement increases, such as when they are released from prison or obtain new travel or other national identification documents.

C. Interpol

93. In the Team's view, the cooperation between the Committee and Interpol over the past few years has been nothing short of extraordinary. In the past year alone, the combined efforts of the two organizations have resulted in the issuance of a new type of international alert for listed persons, known as the Interpol-United Nations Security Council Special Notice; the creation of posters of listed persons who are also the subject of national arrest warrants circulated at the international level; and daily contact between representatives of both organizations for the purposes of gathering additional information for the Consolidated List and Interpol's vast database.[53]

94. At the beginning of December 2005, the notion of an Interpol-United Nations Security Council Special Notice was still theoretical, with details to be agreed by both sides. Six months later, all 258 notices for listed persons with sufficient identifiers had been requested, created, translated into the four official Interpol languages, published and available to the 184 Interpol member countries via Interpol's restricted global police communication system, I-24/7 (and with a public version of each notice on the Interpol web-site, www.interpol.int/Public/NoticesUN/Default.asp). Sixty of the notices contained at least one photograph or sketch, 28 had physical descriptions and 23 included fingerprints. The Interpol-United Nations Security Council Special Notices represent a real and tangible law enforcement tool for States, particularly given the frequent complaints about the paucity of certain identifying information on the Consolidated List (see, e.g., S/2006/154, para. 29).[54]

95. In fact, the notices already have begun to attract attention and yield results. Interpol reports that 53 States and UNMIK have carried out 309 searches on 57 individuals for whom Special Notices have been issued. After publication of the notices, one State reported arresting a person who was the subject of a notice. Other States have responded to the notices by supplying Interpol with additional information on listed persons, including photographs and updated passport data, and, in at least one case, a State supplied current details of the listed person's activities in support of terrorism, as well as those of his accomplices. The Team recommends that the Council and Committee encourage States to continue such information-sharing with Interpol to ensure that law enforcement worldwide has the latest details on listed persons.[55]

[53] Interpol supplied the factual information contained in this section of the report.

[54] So far Interpol has found matches within its Interpol Criminal Information System for 145 of the 355 persons on the Consolidated List, including 52 who were wanted for arrest by various national authorities, as well as for 38 of the 123 entities on the List.

[55] The information offered by Interpol on persons of concern now includes DNA profiles, via its global database of DNA

96. Following the success of this initiative, Interpol and the Committee recently agreed to advance their cooperation further, with Interpol beginning to publish posters of those parties listed by the Committee for whom an Interpol red notice has been issued and for whom a photograph is available.[56] These posters will be particularly beneficial in less-developed areas of the world, for example where border control systems may not be fully automated and the Consolidated List and the Interpol notices system may, therefore, be difficult to implement. A sample poster is attached as annex IV.

97. Furthermore, Interpol has now proposed that the Committee and Interpol consider expanding their cooperation with respect to notices and issue Interpol-United Nations Security Council Special Notices for entities, as well as individuals, with sufficient identifying information. This sharing of information could be particularly valuable for law enforcement in those cases in which an entity is located in more than one country and for those organizations that have attempted to evade the sanctions by re-organizing under a different name but continuing with the same illicit methods of doing business. The Team endorses this initiative, and believes that it is among the many ways that the joint efforts of the United Nations and Interpol can reduce threats to international peace and security.

D. The International Civil Aviation Organization and the International Air Transport Association

98. States' aviation security, safety and facilitation officials appear generally unaware of the sanctions regime, in part through a lack of effective interagency coordination at the national level. The Team has previously recommended that the Committee encourage States to enhance their internal coordination mechanisms concerning the implementation of the sanctions regime, and it continues to note that States that have such mechanisms find implementation easier than those that do not. The Team believes it possible to strengthen sanctions implementation through the International Civil Aviation Organization (ICAO), which maintains global technical aviation standards and recommends best practices, by making reference to the travel ban and the other sanctions measures as appropriate. The ICAO network could also be used to raise awareness of the travel ban among national aviation administrations and explain its impact on their work, for example by clarifying how airline and airport officials should deal with a listed individual who is attempting to travel to a country of which he is neither a citizen nor a resident.

99. The Committee has discussed some proposals from the Team, which include providing an information package to ICAO which could then be disseminated to Member State officials directly involved in implementing the travel ban through ICAO training programmes. In turn, ICAO has agreed that, where possible, it will provide the Committee and the Team with any information it may receive on Al-Qaida/Taliban-related threats. ICAO has also agreed to review its recommended best practices to ensure that they contribute to more effective implementation of the sanctions measures.

profiles, as well as regular law enforcement alerts. See Interpol media releases of 29 June 2006 - www.interpol.int/Public/ICPO/PressReleases/PR2006/PR200621.asp.

[56] The Interpol red notice is a national warrant of arrest or court order circulated at the international level - considered by some countries to be an international warrant for provisional arrest, see www.interpol.int/Public/ICPO/Factsheets/GI02.pdf.

100. The Monitoring Team has also discussed the sanctions regime with the International Air Transport Association (IATA), and again the Committee has discussed proposals for cooperation. These include adding IATA to the Committee's e-mail list so that it receives all updates to the Consolidated List, and providing IATA an information package about the sanctions measures to disseminate to its 260 member airlines[57] and those non-member airlines which participate in its security network. The Team believes that cooperation with IATA on advanced passenger information screening systems, and on travel documentation, has a real potential to enhance implementation of the travel ban.

E. Other international and regional organizations

101. The Team has engaged with other international and regional organizations on a variety of topics, many of them related to the travel ban. The Team intends to expand its discussions with these organizations and propose additional ways in which the Committee could work with them to enhance implementation of the sanctions. As an initial step, the Team recommends that the Committee begin transmission of the Consolidated List to relevant organizations to ensure their understanding and gain their assistance with respect to the sanctions.

VII. Arms embargo

A. Overview

102. Information derived from the resolution 1455 (2003) reports submitted by States, the checklists submitted in accordance with resolution 1617 (2005) and from the Team's visits, confirms that whilst there is general implementation of the arms embargo, there is less widespread understanding of its exact scope. This lack of clarity means that although States may have adequate legislation covering, for example, the general sale of arms and explosives, they may not have systems in place specifically to ensure that there are no breaches of the arms embargo. This is particularly true as concerns terrorist training and the activities of their nationals outside their territories.

B. Conventional arms

1. Explosives and terrorist bombings

103. In its last report, the Team highlighted the fact that terrorists will use the most easily available arms they can find to create the greatest impact (S/2006/154, para. 103). Al-Qaida and its associates have repeatedly demonstrated their adaptability and their preparedness to use improvised or homemade explosive devices. The Team continues to obtain information from States on the regulation of commonly available precursor materials and intends to make some proposals in its forthcoming work on best practices in this area.

[57] IATA membership as at 1 May 2006, as posted at www.iata.org/iata/Sites/agm/file/2006/file/annual_report_06.pdf.

2. Small arms and light weapons

104. The Team has received information from several States that illicit arms trafficking remains a real problem, and it is not only illegal weapons that are available; one State informed the Team that it had discovered four separate incidents of the theft of weapons from an army camp, involving over 400 M-16 assault rifles, and while there was no evidence that these thefts were directly linked to a listed individual or entity, or to any Al-Qaida activity, terrorists are well able to benefit from this sort of incident. While there is again no evidence of any link to Al-Qaida, as opposed to organized crime, these weapons have entered the illegal supply network which terrorists have the ability to access.

105. Another source of concern, as the Team highlighted in its last report, is that there are many regions, such as in Afghanistan or the Horn of Africa, where violations of the arms embargo, or of other Security Council sanctions regimes, take place continuously (S/2006/154, box 6). Because of its global nature, the Al-Qaida/Taliban arms embargo is already difficult to implement, even without these additional potential sources of arms supply to listed individuals, entities and their associates.

C. Chemical, biological, radiological and nuclear terrorism

106. Of the four threats under this category, the possibility of a radiological attack remains the main threat from listed terrorist groups that seek a deadly method of destruction and at the same time create a major media impact. This includes the use of a radiological dispersal device (RDD), also called a 'dirty bomb', consisting of conventional explosive combined with a radioactive device. Whilst the short-term consequences of a RDD-attack may be negligible (minimum casualties), the long-term consequences could be disastrous (widespread fear, long-term pollution and decontamination problems, and major health consequences).

107. This threat has been noted several times by the Monitoring Team, and the Team continues to believe that the only logical response is for Member States to ensure adequate preventive measures, such as proper supervision of national stockpiles of radioactive material and the prevention of theft. These should be combined with improved international controls, through application of universal conventions and standards established by bodies such as the International Atomic Energy Agency (IAEA). The technical standards and guidelines of the IAEA could also be useful in helping Member States towards a more effective implementation of the arms embargo if they incorporated sanctions implementation into the relevant parts. The Team will look further at this issue in its forthcoming paper on best practices.

108. Finally, with regard to countering the "indirect supply, sale or transfer" of chemical, biological, radiological or nuclear (CBRN) material, the Team believes that the most efficient and effective countermeasure remains the improvement of cooperation between Member States, including a greater exchange of information between their intelligence services.

D. Technical advice, assistance and training

109. In its last report, the Team highlighted the fact that some Member States could be unknowing or unwilling hosts to terrorist training camps, which, if they relate to Al-Qaida or its associates, would represent a violation of the arms embargo (S/2006/154, para. 110 and box 8). The Team had hoped to visit some of these States in order to report on the actual situation with regard to these alleged terrorists training camps, but the visits have not so far been possible and the Team will endeavour to follow-up on this issue before its next report.

E. Improving implementation of the arms embargo

1. Explanation of terms

110. The Monitoring Team stated in its last report that Member States need the Committee's guidance and clarification for a better understanding of the meaning of the arms embargo in order to be able to implement it more effectively (S/2006/154, para. 111). Recent meetings with officials of several Member States have corroborated this assessment. In this regard, the Team has prepared an "Explanation of Terms" paper for the Committee's approval which aims to help Member States to have a better understanding of what is expected of them.

111. The Monitoring Team invites the Committee to review the suggested terms of clarification laid out in the paper. If the Committee approves them, it recommends that the paper be provided to Member States through the Committee, perhaps appended to the letter that the Team recommended and the Committee approved, to remind States that the specific nature of the arms embargo requires specific legislation and administrative measures for effective implementation (S/2006/154, para. 111).

2. Illicit trafficking by air

112. An issue that has been raised in several Security Council sanctions committees and which has equal relevance in relation to the Al-Qaida/Taliban arms embargo is the transport by air of illicit arms in violation of the arms embargoes. This issue was given further prominence at the recent G8 Summit, held in St. Petersburg from 15 to 17 July 2006, which called upon "the competent international and the interested regional organizations to take into consideration such illicit transport by air of weapons and munitions in order to recommend, in coordination with the air transport industry, measures that will help to fight and prevent violations of United Nations Security Council arms embargoes".[58]

113. In this regard, the Team notes that its recent meetings with ICAO and IATA have already started a process of cooperation in this area. The Team hopes that its continued discussions with ICAO and IATA on standards and guidelines for the civil aviation industry will assist Member States towards better implementation of the Al-Qaida/Taliban arms embargo.

[58] G8 Summit, St. Petersburg, 15 - 17 July 2006, Chair's Summary of Summit, available at en.g8russia.ru/docs/25.html.

3. Stockpile security

114. In its last report, the Team recommended that to reduce the potential for violations of the arms embargo, it was necessary to remind States of the importance of reducing excess stockpiles, i.e. stocks other than those necessary for legitimate purposes of self-defence (S/2006/154, para. 112). The Committee has asked the Team to follow-up with specific suggestions and a list of projects that address stockpile security for the Committee's further consideration.

4. Arms embargo and the Consolidated List

115. During its meetings with Member States, the Team has been told several times that the better the quality of the names on the Consolidated List, the more credible the List would be and the more effective States' implementation of the sanctions measures. The List would also be more credible if States took action to deal with their nationals who violate the sanctions measures, whether within their territory or wherever else they may be. One possible way to do this is for the Committee to invite States that are confronted with such violations to submit for listing the names of those who are directly involved.

116. In addition, without compromising any current investigations or enforcement actions, the Team recommends that the Committee could remind Member States that they could play a stronger role in the fight against Al-Qaida/Taliban-related terrorism by submitting for listing those individuals who have conducted bombings, killings or other criminal acts as a member of a listed entity or in its name.

117. Finally, the Team recommends that States should also consider submitting for listing those members of listed entities who have directed training or given technical support in the field of arms, explosives (improvised or not), and paramilitary training or technical advice, assistance and training, which are all areas covered by the arms embargo. If the Committee agrees, an extension of this recommendation would be to include on the List those who have benefited from such training or advice.

5. Reminding States of their responsibility

118. As the responsibility for implementing the arms embargo lies entirely with Member States, the Team recommends that the Committee remind them of the urgent need to ensure that their nationals do not breach the embargo, and if they do, to ensure that they have the domestic legislation necessary to take action against them.

119. Following the statement made by the Security Council in resolution 1617 (2005) on the threat from man-portable air defence systems and CBRN-related terrorism, the Team intends to continue its discussions and close cooperation with the experts supporting the CTC and 1540 Committee. In the meantime, States should be encouraged to introduce safety regulations concerning the manufacture and stockpiling of small arms and light weapons, including man-portable air defence systems.

VIII. Member State reporting

Non-reporting States

120. To date 147 Member States have submitted a report to the 1267 Committee in accordance with resolution 1455 (2003), which leaves 44[59] non-reporting States of which 31 are common non-reporting or late-reporting States to the 1267 Committee, the 1540 Committee and the CTC. The Team notes that of these 44 States, 24 are from the African group, nine are from the Asian group, 10 are from the Latin American/Caribbean group, and one is from the Eastern European Group.

121. The Team has held several meetings with the Counter-Terrorism Committee Executive Directorate (CTED) and the experts that support the 1540 Committee to consider how to assist States with their reporting obligations; and following the participation of the three groups in a meeting of the Pacific Islands Forum Working Group on Counter-Terrorism at the end of April 2006, at which the New Zealand government explained its regional assistance programme, the Team submitted several proposals to the 1267 Committee. The Committee then asked the Team to prepare a paper jointly with the other expert groups, including reference to the New Zealand model if appropriate, to outline a common strategy by which the three Committees might deal with the outstanding reporting obligations of States.

122. The Team has prepared the draft paper which is currently being finalized within the three expert groups for submission to the three Committees. So far the expert groups have agreed that the joint paper must promote real coordination between them and identify the resources that they can use in common when dealing with States so as to minimise the need for reports. Second, it should focus on eliminating duplication, especially by preventing two or more groups addressing near identical questions to the same State. Third, it should bring the current reporting round to an end so that the three Committees can move on to address the needs of the late and non-reporting States to promote implementation. The paper will offer concrete and practical suggestions for the Committees' consideration.

IX. Al-Qaida use of the Internet

123. The Team has submitted a paper for the Committee's consideration showing how Al-Qaida and its associates can circumvent the impact of sanctions through use of the Internet, and hopes that new measures and recommendations for States may emerge as a result.

X. Monitoring Team activity

A. Visits

124. Since the end of January 2006, the Team has visited 10 Member States in the following order. In **Italy**, the Team learned of the extensive activity the country has taken to counter terrorism and, in

[59] Montenegro reported as part of Serbia and Montenegro before becoming a separate member of the United Nations.

particular, to implement the Al-Qaida/Taliban sanctions, including through new laws relating to the Internet. The country also established in 2001, soon after the attacks of 11 September, a multi-agency group to coordinate the fight against terrorist financing and set procedures to consider names to propose for listing to the Committee. Italy recognizes the threats of terrorism and extremism faced around the world, in the region, and in its own territory, and officials discussed specific cases of freezing assets and expelling persons involved in terrorism or associated with Al-Qaida, including some on the Consolidated List. In one specific case, Italy has worked with the Committee to allow a listed entity (a hotel) owned by a listed individual to continue operating, under Government oversight, with any profits placed into a frozen account – an arrangement that avoids the loss of jobs, but ensures that corporate revenues are not diverted to support terrorism.

125. The Team made its third visit to **Afghanistan**, with the main purpose this time to try to ensure that the Afghan Government's programme to persuade ex-Taliban to renounce violence and re-join society did not conflict with the sanctions regime.[60] This programme began formally in May 2005 and by the end of the first year 1,246 ex-Taliban had joined. This is rightly regarded as a significant achievement by the Government, but the Committee is concerned that when listed Taliban join the programme, a submission to remove their names from the List, with the necessary supporting argument, must be made and agreed by the Committee before the sanctions against them are lifted. Listed Taliban are now involved in Government and there is an urgent need to resolve this situation. While in Afghanistan, the Team received briefings from a wide range of Afghan officials and others, and received expert advice from the United Nations Assistance Mission in Afghanistan (UNAMA), which arranged a visit to Gardez so that the Team could see how the reconciliation programme worked at a local level.

126. The Team visited **Pakistan** to discuss the general threat from Al-Qaida and the Taliban, and, in particular, events in the border area. As on previous occasions, the Team met the national counter-terrorism committee, coordinated by the Foreign Ministry, which regularly brings together all interested parties. The committee explained current issues to do with implementation, and briefed the Team on the status of current legal challenges brought against the government by listed parties (for more information, see annex III, section C).

127. The Team visited **Albania**, **Bosnia and Herzegovina** and **Croatia** to learn about the implementation of sanctions in a region that a decade ago was mired in conflict and instability. Extremist groups under the guise of non-governmental organizations had moved into the area during that period, many of which are now listed as associated with Al-Qaida, and officials described extensive efforts to freeze their assets, as well as to enforce the sanctions against listed individuals (many of them associated with the listed entities). The Team heard details of the threat of terrorism and innovative measures the countries were creating and utilising to counter that threat and implement the sanctions in an area experiencing rapid changes in development and regional and international integration. Issues with respect to the travel ban and the arms embargo appeared to be particularly complex as the region still faces relatively large movements of persons (some with false travel documents) and private possession of weapons left over from the turmoil of the 1990s. The countries

[60] Program-e Takhim-e Sohl (PTS) or Strengthening the Peace.

described their efforts to modernize and equip themselves to cope with these challenges, but also outlined their assistance needs, particularly with respect to border security.

128. The Team also visited **Armenia**, **Georgia** and **Jordan**. The meetings proved very productive in obtaining information on the action taken by national authorities to implement the sanctions, and on the national and regional threat, as well as on Al-Qaida operations. The visit also opened new avenues of communication regarding several technical questions. For example, officials in all three countries said that the lack of sufficient identifiers for some names on the List complicated and decreased the effectiveness of their implementation of the sanctions regime. However, officials of two States said that they had mitigated the problem by incorporating the List into their national watch lists and databases, and then adding additional identifying and supporting information received through bilateral international cooperation. One State referred to its submission of new names for the List which had been put on hold for some time; it complained at the lack of feedback to States on such proposals which discouraged them from submitting new names or additional information to the Committee.

129. In addition, Georgian officials reported having taken action to deport several persons who had received training from Al-Qaida or the Taliban, but were not immediately able to say whether or not any listed individual had been among them. Jordanian officials noted that persons involved in recent terrorist attacks in the country were not included on the List, but had been trained and armed by Al-Qaida in Iraq. Armenian officials noted that a potential threat came from un-listed Al-Qaida supporters entering the country. Of the three sanctions measures, the implementation of the assets freeze was the most developed in all three States, in particular with regard to the banking and financial sectors. The implementation of the travel ban and the arms embargo appeared less developed, in part due to the difficulty of policing the borders, and a lack of understanding concerning States' obligations and the scope of the two measures.

130. The Team also visited **Thailand**. The information provided confirmed that South-East Asian countries continue to be under threat from Al-Qaida-related terrorism, primarily through the activities of Jemaah Islamiyah (JI) (listed in 2002), which maintains links with the core Al-Qaida structure through individuals and splinter cells. The visit also provided useful information on the problems related to the implementation of the travel ban, in particular the use of false and stolen travel documents. It appears that the travel ban is effective to the extent that where previously Al-Qaida and JI operatives used to travel freely to Thailand; they now must risk using false documents. Thai authorities said that 12 listed individuals had passed through Thailand prior to their listings, but they had not been observed entering the country subsequently, and if they had done so, must have done so illegally, as was the case with Hambali, who was arrested there in August 2003.

131. A Team member also accompanied the Chairman of the Committee on his visit to three additional Member States: **Qatar**, **Saudi Arabia** and **Yemen**. This trip allowed the Chairman to hear the particular concerns of these three countries, all of which emphasised their commitment to combat Al-Qaida, the Taliban and associated groups, and pledged their continued support for the sanctions regime. The three Member States explained their various efforts particularly in the rehabilitation of

misguided youth who fall prey to the message of Al-Qaida. The Chairman invited the Saudi Government to address the Committee about this work.

B. Talks and meetings

132. The Team also attended various conferences and meetings, such as a United Nations Office on Drugs and Crime (UNODC) national workshop on Combating Financing of Terrorism in Sana'a, Yemen; another UNODC-sponsored workshop in Djibouti on International Cooperation in the Fight against Terrorism and its Financing for members of the Common Market for Eastern and Southern Africa (COMESA); a Counter-Financing of Terrorism Conference in the Hague, Netherlands; a Pacific Islands Forum Working Group on Counter-Terrorism meeting in Auckland, New Zealand, and a European Union-United States Workshop on Financial Sanctions in Vienna, Austria.

133. The essential message from all these meetings was the same. There continues to be widespread ignorance or lack of understanding of the Al-Qaida/Taliban sanctions regime, but a great deal of interest in its provisions and wide support for its intentions. The Team receives much feedback and comment when it attends and speaks at these conferences; audiences are most interested in hearing what contribution they can make to the effectiveness of the sanctions and how the burden of implementation can best lead to real results for counter-terrorism. As a result of these meetings, the Team believes it has raised awareness of the sanctions regime, encouraged a sense of engagement, and promoted greater involvement from officials who are working on the subject in their national capacities, but may feel remote from the work of the Security Council.

C. Regional meetings of intelligence and security heads

134. The Team has continued to attend and hold regular meetings with senior officials from intelligence and security services. In the Team's opinion, these are an invaluable way to find out what is happening on the ground and how the sanctions regime can be fine-tuned according to changes in the threat from Al-Qaida and its methodology. At its latest meeting for heads of services from Algeria, Egypt, Libya, Morocco, Pakistan, Saudi Arabia and Yemen, which was led by the Chairman of the 1267 Committee, the participants again stressed the urgency of addressing terrorist use of the Internet to recruit, plan and launch attacks. In addition, they spoke about their experience with rehabilitation and reconciliation programmes for former terrorists.

1. Somalia

135. The success of the Union of Islamic Courts in Somalia has caused neighbouring countries and others in the international community to worry that Somalia may offer a safe haven from which Al-Qaida-related groups and individuals can plan attacks elsewhere. Certainly there are foreign fighters in Somalia who support Al-Itihaad Al-Islamiya (AIAI) and Hassan Dahir Aweys, both of which have been on the Consolidated List since 2001. The challenge is to identify and marginalize those members of the Islamic Courts who follow AIAI, or a Taliban or Al-Qaida programme. One way to do this, and so contribute to stabilising Somalia, may be to add their names to the Consolidated List.

136. With this in mind, the Team held a meeting for regional security and intelligence services in Addis Ababa, Ethiopia,[61] which agreed to research and add to a preliminary list of Al-Qaida-related individuals in Somalia, drawn up by the participants, with a view to submitting them to the Committee for possible inclusion on the Consolidated List.

2. Committee of Intelligence and Security Services of Africa

137. A Team member attended the third meeting of the Committee of Intelligence and Security Services of Africa (CISSA) in Namibia. This pioneering initiative aims to coordinate the work of intelligence and security services of African Union Member States against major threats, especially terrorism. The participating States confirmed their support for Security Council efforts in the global fight against terrorism, particularly the fight against Al-Qaida and associated groups, and the Team member was able to brief many participants on the latest developments.

3. Meeting of heads of special services, state security and law-enforcement agencies in Kazan, Russian Federation

138. A Team member also addressed the fifth meeting of special services hosted by the Russian Federal State Security Service (FSB) in Kazan. This meeting also provided an opportunity to discuss with representatives of the 75 States that attended the threat from Al-Qaida and the Taliban, the effectiveness of the sanctions regime, issues to do with implementation and areas for possible joint work.

4. Western Sahel/sub-Saharan area

139. At the request of States in the region, the Team has agreed to hold a meeting for intelligence and security service heads from certain countries in the Western Sahel/sub-Saharan area. The Team will discuss the results of this meeting in its next report.

5. South-East Asia

140. Several States have also suggested that the Team convene a meeting for security and intelligence services in South-East Asia. The initial response from the region has been positive, and the Team continues to discuss objectives with potential participants.

D. International and regional organizations

141. Organization for Security and Co-operation in Europe (OSCE): Building on the Committee Chairman's visit to the OSCE in September 2005 and other meetings between the Team and the OSCE Action against Terrorism Unit (ATU), the Team again visited the OSCE Secretariat in Vienna. While the ATU will continue as the OSCE focal point for anti-terrorism coordination, discussions also involved other units, including those dealing with economic activities, strategic police matters, field

[61] Attended by Ethiopia, Saudi Arabia, Sudan and Yemen, as well as the Transitional Federal Government of Somalia. Kenya was unfortunately unable to be present.

operations, small arms and light weapons, and border security. The Committee subsequently approved thirteen proposals for cooperation with the OSCE, which the Team has shared with the relevant CTED experts, who have expressed interest in coordinating with the Team on five of them.

142. Following the Committee's approval of the Team's proposals, several have already been completed on the initiative of the ATU. These include the circulation of information on the Al-Qaida/Taliban sanctions regime within the OSCE Counter-Terrorism Network (CTN) to enhance States' awareness of the measures and of recent developments, such as changes in the Consolidated List and revision of the Committee's Guidelines. The ATU has also added links from the OSCE website to the 1267 and 1540 Committee websites, to complement existing links to the CTC website. To ensure that OSCE staff is aware of the Committee's work, the ATU has also incorporated information on the Al-Qaida/Taliban sanctions measures into its "Field Reference for OSCE Anti-Terrorism Efforts". In addition, OSCE field operations in several Member States have briefed the Team during its visits.

143. Meetings with ICAO and IATA are dealt with in section VI, D of this report.

144. The Team made its third visit in two years to Interpol headquarters in Lyon, France, to discuss cooperation on sanctions implementation and, in particular, to resolve outstanding issues related to the Interpol-United Nations Security Council Special Notices for individuals, whether this programme could be expanded to entities, and the feasibility of issuing posters for persons both wanted for arrest by Interpol and subject to sanctions by the Committee. After further discussions with Interpol officials in New York in June 2006, all these matters have moved forward, including the recent release and distribution of the posters by Interpol (see annex IV). The two sides also continue to explore ways to use Interpol information to improve the Consolidated List.

E. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1540 (2004)

145. In addition to its cooperation with CTED concerning Member States' reporting requirements and international and regional organizations, the Team has continued to coordinate its travel plans with CTED and to exchange information prior to and following its own and CTED trips to Member States. It has routinely carried briefs for CTED and the expert group that supports the 1540 Committee, and, as mentioned in its fourth report, a member of the Team joined CTED on its visit to Tanzania. The visit allowed the Team to follow-up on matters arising from its first visit in 2005. The Team hopes to join CTED on at least two other trips to Member States before the end of the year.

F. Cooperation with other United Nations bodies, funds and programmes

146. UNODC: The Committee agreed to several proposals for cooperation with UNODC following a Team visit to its headquarters in Vienna. One of these allows the Team to use UNODC mission assessment reports to help identify gaps in the implementation of the sanctions measures. Others relate to: UNODC dissemination of information on the Al-Qaida/Taliban sanctions regime and on the work of the Committee and the Team; UNODC ensuring that when providing technical assistance to

States, it checks that they have the capacity, most specifically in the legislative and regulatory areas, to implement the Al-Qaida/Taliban sanctions measures, in particular the assets freeze; and, UNODC, within the areas of its competence and mandate, helping States to fulfil their obligations to report to the relevant Security Council Committees. The Team has worked closely with CTED on these areas of cooperation with UNODC, in particular with regard to assistance with reporting.

147. OLA: In response to the Chairman's letter to the Secretary-General dated 30 June 2005 asking if there were contractual arrangements between the United Nations system and listed individuals and entities, the Secretary-General inquired with the departments, offices, funds and programmes, and regional commissions, including peacekeeping missions, all of which fall under his responsibility. The responses received indicated that there were no such arrangements. On 31 January 2006, the Legal Counsel replied for the Secretary-General and informed the Chairman to that effect. The Legal Counsel also informed the Chairman that since different offices use different methods to ensure that the United Nations would not enter into such contractual arrangements, the Secretary-General had decided to engage in a review of the internal procedures with a view to developing a uniform approach. In this regard, the Secretary-General requested the Department of Management to develop such a uniform approach, with the assistance of OLA. The Chairman of the Committee requested that the Committee be informed of the progress of this review which should also look at ad-hoc contractual arrangements.

148. In the meantime, the Committee has asked the Team to prepare, in coordination with the Secretariat, a strategy paper specifically focused on the Committee's relationship with relevant international and regional organizations to ensure effective implementation of the sanctions measures. In this respect, the Team notes that the CTC, through CTED, has been tasked to engage with relevant international and regional organizations, international financial institutions and specialized organizations and agencies, as part of the broader counter-terrorism effort across the United Nations system. As with other areas of its work, the Team will cooperate closely with CTED to ensure that its contacts with regional and international organizations are properly coordinated with CTED and avoid duplication or overlap.

149. Apart from the issue of contracts between international and regional organizations and listed parties, the strategy paper will include sections on the work of the Team, as endorsed by the Committee, with relevant international and regional organizations, international financial institutions and specialized organizations and agencies, such as IAEA, IATA, ICAO, the International Maritime Organization (IMO), Interpol, the International Office for Migration (IOM), Organisation for the Prohibition of Chemical Weapons (OPCW), OSCE and the World Customs Organization (WCO), to assist Member States to implement the sanctions regime more effectively. Work with these organizations will develop best practices, find new ways to spread knowledge of the sanctions regime, for example through incorporating the Al-Qaida/Taliban sanctions into existing relevant standards and training programmes, identify problems with implementation and, where appropriate, catalogue relevant assistance needs for transmission to CTED.

G. Database

150. The Team's database, which is intended to facilitate the efficient storage, retrieval, management and analysis of the data which the Team has gathered, is now up and running. Most of this data has been entered and licenses have been given for their use to CTED and the experts that support the 1540 Committee.

Annex I

Drug traffickers and the Taliban: a common interest

1. In April 2005, Bashir Noorzai, also known as Haji Bashir Noorzai, a major Afghan drug kingpin, was arrested in the United States and charged with conspiracy to import more than $50 million worth of heroin from Afghanistan and Pakistan into the United States and other countries.

2. In October 2005, the United States authorities announced the extradition from Afghanistan of another drug overlord, Baz Mohammad. He was charged with conspiracy to import more than $25 million worth of heroin from Afghanistan to the United States and other countries.

3. According to their indictments, both men were closely aligned with the Taliban. Baz Mohammad was reported to have controlled opium fields in the province of Nangarhar, where the Taliban exercise a high degree of control over farming areas. Furthermore, the indictment charged that Noorzai provided demolitions (materials), weaponry, and manpower to the Taliban. As for Baz Mohammad, his indictment states that he provided financial support to the Taliban in return for protection for his organization's opium crops, heroin laboratories, drug-transportation routes, and members and associates.

4. The indictment quoted Baz Mohammad as telling his associates that selling heroin in the United States was a "Jihad," because they were taking American money for heroin which at the same time was killing them.

Sources: indictment of Noorzai located at www.house.gov/kirk.pdf/NorzaiIndictment.pdf; the United States Department of Drug Enforcement Administration news releases 25 April 2005 located at www.usdoj.gov/dea/pubs/states/newsrel/nyc042505.html and 24 October 2005 located at www.dea.gov/pubs/pressrel/pr102405.html; the United States Department of Justice Press Release 11 July 2006 located at www.usdoj.gov/usao/nys/Press%20Releases/July%2006/Baz%20Mohammad%20Plea%20PR.pdf; and information provided by DEA officers.

Annex II

Consolidated List: cover sheet for Member State submissions to the Committee

Please complete as many of the following fields as possible:

I. IDENTIFIER INFORMATION – for Individuals						
Where possible, note the nationality or cultural or ethnic sources of names/aliases. Provide all available spellings.	**Surname/ Family Name/ Last Name**	**First Name**	**Additional name (e.g. father's name or middle name), where applicable**	**Additional name (e.g. grandfather's name), where applicable**	**Additional name, where applicable**	**Additional name, where applicable**
Full Name: (in original and Latin script)						
Aliases/"Also Known As" (A.K.A.s): Note whether it is a strong or weak alias. Current						
Former						
Other nom de guerre, pseudonym:			**Title:** Honorary, professional or religious title			
Employment/Occupation: Official title/position			**Nationality/ Citizenship:**			
Date of Birth: (DD-MM-YYYY)			**Passport Details:** (number, issuing date & country, expiry date)			
Alternative Dates of Birth (if any): (DD-MM-YYYY)			**National Identification Number(s), Type(s):** (e.g. Identity card, Social Security)			
Place of Birth: (provide all known details including city, region, province/state, country)			**Address(es):** (provide all known details, including street address, city, province/state, country)			
Alternative Place(s) of Birth (if any): (city, region, province/state, country)			**Previous Address(es):** (provide all known details, including street address, city, province/state, country)			
Gender:			**Languages spoken:**			
Father's full name:			**Mother's full name:**			
Current location:			**Previous location(s):**			
Undertakings and entities owned or controlled, directly or indirectly by the individual (see UNSCR 1617 (2005), para. 3):						
Other relevant details (such as physical description, distinguishing marks and characteristics)						

IDENTIFIER INFORMATION -- For Groups, Undertakings, or Entities	
Name:	
Also Known As (A.K.A.s): Where possible, note whether it is a strong or weak A.K.A.	**Now Known As (N.K.A.s)**
	Formerly Known As (F.K.A.s)
Address(es): Headquarters and/or branches. Provide all known details, including street address, city, province/state, country	
Tax Identification Number: (or local equivalent, type)	
Other Identification Number and type:	
Other Information:	

II. BASIS FOR LISTING

May the Committee publicly release the following information? Yes ☐ No ☐

May the Committee release the following information to Member States upon request? Yes ☐ No ☐

Complete one or more of the following:

(a) participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of Al-Qaida (AQ), Usama bin Laden (UBL), or the Taliban, or any cell, affiliate, splinter group or derivative thereof:[1]

- Name(s) of cell, affiliate, splinter group or derivate thereof:

(b) supplying, selling or transferring arms and related materiel to AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof:

- Name(s) of cell, affiliate, splinter group or derivate thereof:

(c) recruiting for AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof:

- Name(s) of cell, affiliate, splinter group or derivate thereof:

(d) otherwise supporting acts or activities of AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof:

- Name(s) of cell, affiliate, splinter group or derivate thereof:

(e) Other association with AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof:

- Briefly explain nature of association and provide name of cell, affiliate, splinter group or derivate thereof:

(f) Entity owned or controlled, directly or indirectly, by, or otherwise supporting, an individual or entity on the Consolidated List:[2]

- Name(s) of individual or entity on the Consolidated List:

Please attach a Statement of Case which should provide as much detail as possible on the basis(es) for listing indicated above, including: (1) specific findings demonstrating the association or activities alleged; (2) the nature of the supporting evidence (e.g., intelligence, law enforcement, judicial, media, admissions by subject, etc.) and (3) supporting evidence or documents that can be supplied. Include details of any connection with a currently listed individual or entity. Indicate what portion(s) of the Statement of Case the Committee may publicly release or release to Member States upon request.

III. POINT OF CONTACT *The individual(s) below may serve as a point-of-contact for further questions on this case.* (THIS INFORMATION SHALL REMAIN CONFIDENTIAL)

Name *Position/Title*

[1] S/RES/1617 (2005), para. 2

[2] S/RES/1617 (2005), para. 3

Annex III

Litigation by or relating to individuals on the Consolidated List

1. In July 2006, the Court of First Instance of the European Court of Justice handed down two significant judgements in support of the Al-Qaida/Taliban sanctions regime, following two similar opinions by the Court in September 2005. The European court's decisions involved two of the 18 known legal challenges[62] filed on behalf of persons and entities listed by the Committee. Three of these cases (two in the United States, and one in Pakistan) were initiated since the Team's last report. One recent decision in Turkey ruled against the assets freeze measure due to a lack of evidence presented to the court. The following is a summary of the relevant legal proceedings, as updated from previous reports (S/2006/154, annex; S/2005/572, annex II; S/2005/83, annex II).[63]

A. European Union

2. On 12 July 2006, the Court of First Instance of the European Court of Justice handed down decisions in two cases challenging the Al-Qaida/Taliban sanctions imposed by the Security Council and Committee. Shafiq al-Ayadi, a Tunisian national residing in Dublin, brought one case, and Faraj Hassan Al Saadi, a Libyan national held in prison in the United Kingdom pending the outcome of extradition proceedings, filed the other. Al-Ayadi was added to the Consolidated List in October 2001 and Al Saadi in November 2003. The applicants alleged that the United Nations assets freeze — which is automatically implemented in the European Union via regulations promulgated by the European Commission — violated certain fundamental principles, such as those of subsidiarity, proportionality and respect for human rights.

3. The court dismissed the applicants' claims and upheld the sanctions, given, in part, certain procedures adopted by the Committee to allow, for example, petitions for exceptions to the assets freeze for necessary expenses and for de-delisting. Based on statements made by counsel for the Council of the European Union, the court interpreted the scope of the assets freeze, including that "the use for strictly private ends of the frozen economic resources, such as a house to live in or a car, is not forbidden per se by those measures. That is all the more true where everyday consumer goods are concerned." The court also found that the Security Council resolutions do not prevent a listed person "from carrying on business or trade activities, whether as an employee or as a self-employed person ..., but in substance concern the receipt of income from such activity" – which could be supervised by national authorities based on the circumstances of each case.[64]

4. The two court rulings followed similar decisions issued by the court last year in two other cases involving listed individuals and a listed entity. In the latter two cases, the applicants appealed

[62] There have been five challenges to listings made pursuant to the Al-Qaida/Taliban sanctions before the Court of First Instance of the European Court of Justice, seven cases in the United States, two in both Pakistan and Turkey and one per country in Belgium and Italy. Most of these cases have been described in the Team's previous reports (S/2006/154, annex; S/2005/572, annex II; S/2005/83, annex II). The other cases described in the Team's reports involved related actions involving listed persons, such as decisions regarding criminal investigations or forfeiture proceedings.

[63] Information provided by Member State Governments and regional organizations.

[64] See Ayadi v Council of the European Union, Case No. T-253/02, paras. 126-132.

the decisions of the Court of First Instance to the Court of Justice, and the parties have filed written pleadings, but no hearing dates have been scheduled yet. The fifth and final case before the Court of First Instance involving a party on the Consolidated List remains pending.

B. Netherlands

5. As the Team has previously noted, after the Committee listed the Netherlands branch of the Al-Haramain Foundation and its chairman Aqeel Al-Aqil on 6 July 2004, the Dutch Public Prosecution Service attempted to ban and dissolve the organization, known as Stichting Al-Haramain Humanitarian Aid, and release any credit balance of its bank account to the State. In January 2006, an appeals court upheld a district court decision against the Government, ruling that prosecutors had not proven that the Netherlands branch of Al-Haramain, separate and apart from the international organization, had supported terrorism. The appeals court also found that dissolving the organization required expropriating its assets, which goes further than the freezing required by United Nations sanctions. The Government chose not to appeal the higher court's ruling. The assets remain frozen.

C. Pakistan

6. Pakistan faces two lawsuits from listed entities. As noted in previous reports, listed entity Al-Rashid Trust filed a petition against the freezing of its assets with a local court (High Court of the southern province of Sindh). The court ruled in the trust's favour, finding that the legislation under which the Government had acted, the United Nations (Security Council) Act, 1948, required for its implementation a statutory notification (SRO) for each individual and entity subject to the sanctions. Because the implementation of the Al-Qaida/Taliban sanctions was a new procedure for the Government, the court's ruling assisted it in developing its procedure, and the Government thereafter issued the requisite SRO, while appealing the lower court judgement to the Supreme Court. The Supreme Court heard the case on 2 March 2006 and granted the trust leave to appeal. The trust is expected to file its petition to the Court later this year. In the meantime, the assets of the trust remain frozen.

7. The second case involves Al-Akhtar Trust International, which challenged the freezing of its assets in the High Court of Sindh. That case remains pending, with the next hearing date not yet scheduled, and the trust's assets remain frozen.

D. Switzerland

8. On 1 June 2006, listed individual Youssef Nada filed a complaint against the Office of the Attorney General of Switzerland, seeking compensation for financial losses resulting from an investigation opened in October 2001 by the federal prosecutor against him and his company, Nada Management Organization (which is also listed). The federal prosecutor dropped his criminal investigation in May 2005 because he did not have the decisive evidence that would have allowed him to continue.

9. The current case filed by Nada is pending before the Federal Criminal Tribunal in Bellinzona, which is the body competent to deal with complaints against the Office of the Attorney General. Because criminal proceedings in Switzerland were stopped, the accounts of Nada and another director

of the company, Ali Ghaleb Himmat (who is also listed), were unfrozen as far as criminal measures were concerned.

10. However, the assets of the two men remain frozen based on Switzerland's Al-Qaida and Taliban regulation, because their names remain on the Consolidated List. On 15 June 2006, the administrative authority of the second instance rejected an appeal by Nada to delete him and associated entities from the domestic Al-Qaida and Taliban sanctions list. The Federal Department of Economic Affairs argued that Switzerland was bound by the decisions of the Security Council and could not act on its own authority. The Department called Nada's attention to the 1267 (1999) Committee's de-listing procedures. It pointed out that the Swiss Government lacked the competence to commence a de-listing procedure because Nada is not a citizen or resident of Switzerland.

E. Turkey

11. In previous reports, the Team described two legal challenges filed in Turkey by listed persons: one by Yasin Al-Qadi and the other by Nasco Nasreddin Holding AS. In the Al-Qadi case, the State Council (Danistay) issued a judgement on 4 July 2006, cancelling the relevant sections of the Cabinet decision of 22 December 2001 that had frozen Al-Qadi's assets in Turkey. The State Council based its decision on the fact that the information and documents of the United Nations Security Council which alleged that Al-Qadi was associated with Al-Qaida should have been (but were not) presented to the judiciary in Turkey to enable an evaluation of the materials. The case involving Nasco Nasreddin Holding remains pending.

F. United States

12. Individuals and entities on the Consolidated List have filed seven cases challenging aspects of their designations and freezing orders in the United States, with three of the cases dismissed in 2003 and the other four pending. Three of the pending cases involve Al-Haramain Islamic Foundation, which had its assets frozen in the United States in February 2004 prior to its listing by the Committee in September 2004, or its director. Al-Haramain filed the most recent action on 26 April 2006 not to overturn its listing, but to obtain the return of thousands of volumes of religious literature, including copies of the Koran that had been removed by United States authorities at the time of the freezing. The two sides agreed to dismiss the case on 24 July 2006, with the United States licensing the return of the literature to counsel for Al-Haramain, which would allow for further distribution of the material.

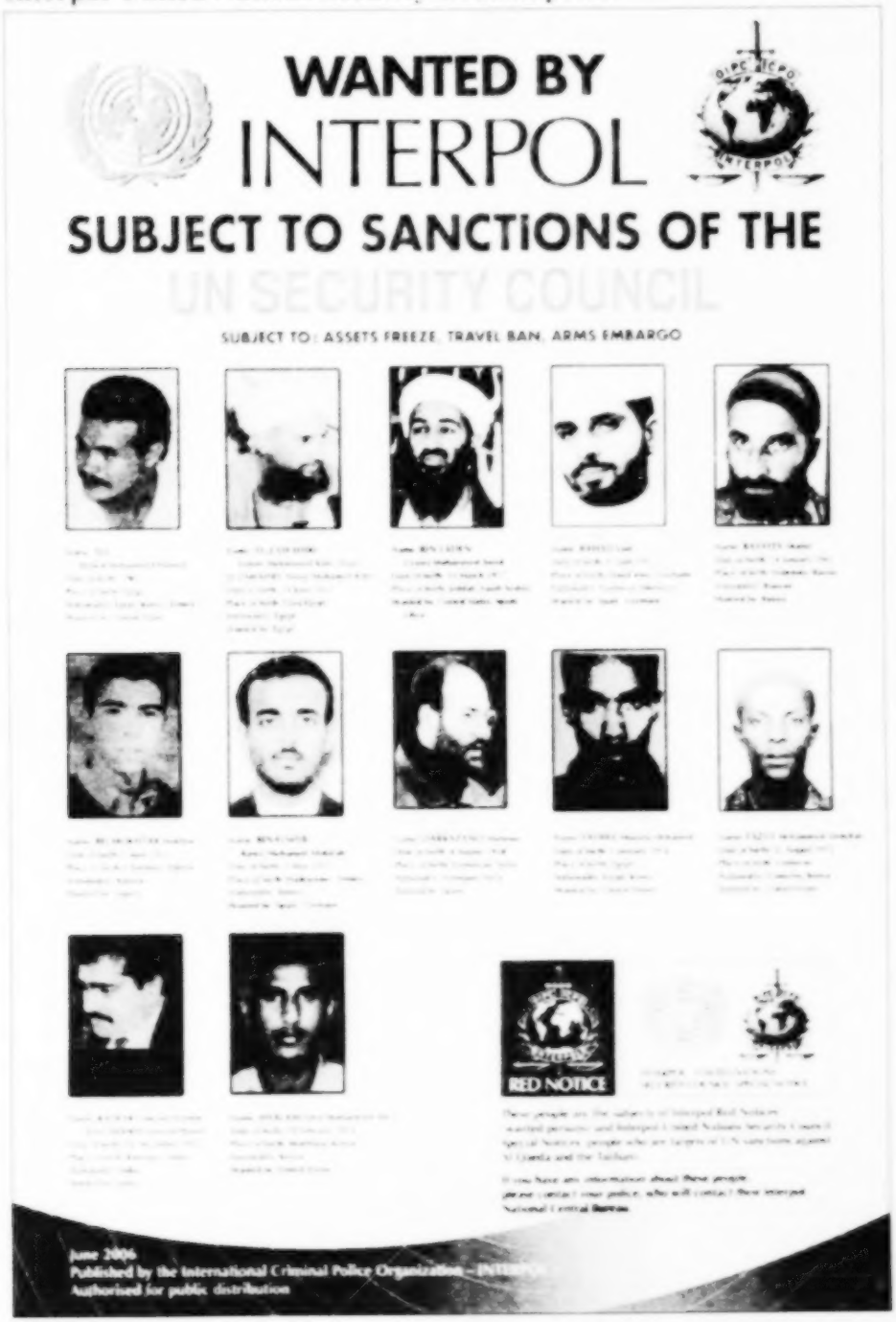
13. Al-Haramain filed its other lawsuit on 28 February 2006, claiming that the United States Government used an allegedly illegal programme of electronic surveillance without a warrant or court order to gather evidence, which it contends was used to designate the foundation as a listed entity. The United States has moved to dismiss the case, citing state secrets, and a decision remains pending.

14. In a third case related to Al-Haramain, its former chairman, Aqeel Al-Aqil, filed suit in May 2005, claiming that his designation by the United States was unconstitutional. The Government moved to dismiss the case, and Al-Aqil filed a written response. A decision is pending.

15. A decision is also awaited in a case filed in 2002 by Global Relief Foundation, which challenged its designation by the United States in 2002. A federal district court dismissed many of Global Relief's claims in 2002, and an appeals court affirmed this decision, but a motion for summary judgement on the other counts remains pending.

Annex IV

Interpol-United Nations Security Council poster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